香港申訴專員用箋 THE OMBUDSMAN, HONG KONG

YOUR REF :
OUR REF :
DATE : 15 June 2005

The Honourable Henry TANG, GBS, JP
The Acting Chief Executive of the
Hong Kong Special Administrative Region

Dear Sir,

Pursuant to section 3(4) of Schedule 1A to The Ombudsman Ordinance, I have the honour of submitting my report on the exercise of the functions of The Ombudsman in the year April 2004 to March 2005. This includes a statement of accounts and the auditor's report on the statement.

Yours faithfully,

(Alice TAI)
The Ombudsman

Encl.

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THE OMBUDSMAN

STATEMENT OF ACCOUNTS

FOR THE YEAR ENDED 31ST MARCH 2005

AUDITORS' REPORT TO THE OMBUDSMAN

(established in Hong Kong pursuant to the Ombudsman Ordinance)

We have audited the accounts on pages 2 to 9 which have been prepared in accordance with accounting principles generally accepted in Hong Kong.

Respective responsibilities of The Ombudsman and the auditors

The Ombudsman Ordinance requires The Ombudsman to prepare accounts which give a true and fair view. In preparing accounts which give a true and fair view it is fundamental that appropriate accounting policies are selected and applied consistently.

It is our responsibility to form an independent opinion, based on our audit, on those accounts and to report our opinion solely to you, as a body, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

Basis of opinion

We conducted our audit in accordance with Statements of Auditing Standards issued by the Hong Kong Institute of Certified Public Accountants. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the accounts. It also includes an assessment of the significant estimates and judgements made by The Ombudsman in the preparation of the accounts, and of whether the accounting policies are appropriate to the circumstances of The Ombudsman, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance as to whether the accounts are free from material misstatement. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the accounts. We believe that our audit provides a reasonable basis for our opinion.

Opinion

In our opinion, the accounts give a true and fair view of the state of affairs of The Ombudsman as at 31st March 2005 and of its surplus and cash flows for the year then ended.

PricewaterhouseCoopers
Certified Public Accountants

Hong Kong, 25th May 2005

INCOME AND EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31ST MARCH 2005

	Note	2005	2004
		HK$	HK$
Income			
Government subventions		86,913,065	93,230,836
Amortisation of Government subventions	7	3,423,302	3,379,576
Interest income on bank deposits		741,441	925,910
Other income		21,330	11,889
		91,099,138	97,548,211
Expenditure			
Operating expenses		53,552,480	63,946,230
Surplus for the year	3	37,546,658	33,601,981
Accumulated surplus brought forward		86,565,607	52,963,626
Accumulated surplus carried forward		124,112,265	86,565,607

BALANCE SHEET
AS AT 31ST MARCH 2005

	Note	2005 HK$	2004 HK$
Non-current assets			
Fixed assets	6	93,155,221	96,458,418
Current assets			
Deposits and prepayments		1,232,433	1,054,590
Interest receivable		143,574	28,752
Bank balances and cash		129,259,012	93,735,836
		130,635,019	94,819,178
Current liabilities			
Other payables and accruals		1,066,451	2,359,296
Contract gratuity payable		1,492,420	3,900,222
Government subventions - current	7	3,404,480	3,392,470
		5,963,351	9,651,988
Current assets		124,671,668	85,167,190
Net assets		217,826,889	181,625,608
Represented by:			
Accumulated funds		124,112,265	86,565,607
Non-current liabilities			
Contract gratuity payable		3,963,887	1,994,057
Government subventions - non-current	7	89,750,737	93,065,944
		93,714,624	95,060,001
		217,826,889	181,625,608



The Ombudsman

STATEMENT OF CHANGES IN FUNDS
FOR THE YEAR ENDED 31ST MARCH 2005

	2005 HK$	2004 HK$
Total funds as at 1st April	86,565,607	52,963,626
Surplus for the year	37,546,658	33,601,981
Total funds as at 31st March	124,112,265	86,565,607

CASH FLOW STATEMENT
FOR THE YEAR ENDED 31ST MARCH 2005

	Note	2005 HK$	2004 HK$
Net cash inflow from operating activities	8	34,896,557	17,706,437
Investing activities			
Interest received		626,619	1,298,919
Government subvention received for purchase of fixed assets		-	3,888
Decrease/(increase) in bank deposits with original maturity over 3 months		91,570,000	(29,570,000)
Net cash inflow/(outflow) from investing activities		92,196,619	(28,267,193)
Increase/(decrease) in cash and cash equivalents		127,093,176	(10,560,756)
Cash and cash equivalents at 1st April		2,165,836	12,726,592
Cash and cash equivalents at 31st March		129,259,012	2,165,836
Analysis of balances of cash and cash equivalents:			
Bank balances and cash		129,259,012	93,735,836
Less bank deposits with original maturity over 3 months		-	(91,570,000)
		129,259,012	2,165,836

NOTES TO THE ACCOUNTS

1 Status

The Ombudsman was established as a corporation sole by statute on 19th December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

2 Principal accounting policies

The principal accounting policies adopted in the preparation of these accounts are set out below:

(a) Basis of preparation

The accounts have been prepared under the historical cost convention and in accordance with accounting principles generally accepted in Hong Kong and comply with accounting standards issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA").

(b) Recently issued accounting standards

The HKICPA has issued a number of new and revised Hong Kong Financial Reporting Standards and Hong Kong Accounting Standards ("new HKFRSs") which are effective for accounting periods beginning on or after 1st January 2005. The Ombudsman has not early adopted these new HKFRSs in the accounts for the year ended 31st March 2005. The Ombudsman has already commenced an assessment of the impact of these new HKFRSs but is not yet in a position to state whether these new HKFRSs would have a significant impact on its results of operations and financial position.

(c) Income recognition

Government subventions and other income are accounted for on an accruals basis.

Interest income is recognised on a time proportion basis, taking into account the principal amounts outstanding and the interest rates applicable.

(d) Property and equipment

The Ombudsman, as a non-profit making organisation, is exempt from compliance with the Statement of Standard Accounting Practice 17 "Property, plant and equipment" issued by the HKICPA.

Property and equipment costing less than HK$1 million individually are written off in the year of purchase to the income and expenditure account.

Property and equipment costing over HK$1 million individually are stated at cost less accumulated depreciation and accumulated impairment losses and are depreciated at rates sufficient to write off their cost less accumulated impairment losses over their estimated useful lives on a straight-line basis. The principal annual rates are as follows:-

Land and buildings	Shorter of unexpired period of the lease or expected useful life
Leasehold improvements	10%

2 Principal accounting policies (Continued)

(e) Government subventions

A government subvention is recognised, when there is reasonable assurance that The Ombudsman will comply with the conditions attaching to it and that the subvention will be received.

Government subventions relating to income are deferred and recognised in the income and expenditure account over the period necessary to match them with the costs they are intended to compensate.

Government subventions relating to the purchase of fixed assets are included in liabilities as deferred income and are credited to the income and expenditure account on a straight-line basis over the expected lives of the related assets.

(f) Employee benefits

(i) Employee leave entitlements

Employee entitlements to annual leave are recognised when they accrue to employees. A provision is made for the estimated liability for annual leave as a result of services rendered by employees up to the balance sheet date.

Employee entitlements to sick leave and maternity or paternity leave are not recognised until the time of leave.

(ii) Pension obligations

The Ombudsman has established a mandatory provident fund scheme ("MPF scheme") in Hong Kong. The assets of the MPF scheme are held in separate trustee-administered funds. Both the Ombudsman and the employees are required to contribute 5% of the employees' relevant income. The Ombudsman's contributions to the MPF scheme are expensed as incurred.

(g) Operating leases

Leases where substantially all the risks and rewards of ownership of assets remain with the leasing company are accounted for as operating leases. Payments made under operating leases net of any incentives received from the leasing company are charged to the income and expenditure account on a straight-line basis over the lease period.

3 Surplus for the year

Surplus for the year is stated after charging the following:

	2005 HK$	2004 HK$
Auditors' remuneration	27,500	25,000
Depreciation	3,423,302	3,375,688
Operating lease rentals - land and buildings	115,200	115,400
Property and equipment (costing less than HK$1 million individually) written off	857,514	373,820
Staff costs (Note 4)	44,264,534	51,615,540

NOTES TO THE ACCOUNTS

4 Staff costs

	2005 HK$	2004 HK$
Salaries and allowances	38,483,542	45,451,427
Contract gratuity	4,388,673	4,340,704
Pension costs - MPF scheme	802,082	758,322
Unused annual leave	113,522	636,318
Other staff benefits	476,715	428,769
	44,264,534	51,615,540

5 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of The Ombudsman Ordinance.

6 Fixed assets

	Leasehold improvements HK$	Land and buildings HK$	Office furniture HK$	Office equipment HK$	Motor vehicle HK$	Computer equipment HK$	Total HK$
Cost							
At 1st April 2004	10,999,695	91,700,000	1	1	1	1	102,699,699
Price adjustment (Note)	120,105	-	-	-	-	-	120,105
At 31st March 2005	11,119,800	91,700,000	1	1	1	1	102,819,804
Accumulated depreciation							
At 1st April 2004	1,723,788	4,517,493	-	-	-	-	6,241,281
Charge for the year	1,130,802	2,292,500	-	-	-	-	3,423,302
At 31st March 2005	2,854,590	6,809,993	-	-	-	-	9,664,583
Net book value							
At 31st March 2005	8,265,210	84,890,007	1	1	1	1	93,155,221
At 31st March 2004	9,275,907	87,182,507	1	1	1	1	96,458,418

Note
The costs incurred for leasehold improvements are still under negotiation between the supplier and Government. Accordingly, The Ombudsman, by reference to the costs estimated by the Architectural Services Department of Government, has made a price adjustment to reflect revised costs.

NOTES TO THE ACCOUNTS

7 Government subventions

The amounts represent the funds granted by Government for the purchase of land and buildings and leasehold improvements and are recognised as income on a straight line basis over the useful life of the assets, which are estimated to be 40 years and 10 years, respectively.

	2005 HK$	2004 HK$
Government subventions	93,155,217	96,458,414
Current portion of government subventions	(3,404,480)	(3,392,470)
	89,750,737	93,065,944

8 Reconciliation of surplus for the year to net cash inflow from operating activities

	2005 HK$	2004 HK$
Surplus for the year	37,546,658	33,601,981
Interest income	(741,441)	(925,910)
Depreciation	3,423,302	3,375,688
Amortisation of Government subventions	(3,423,302)	(3,379,576)
Operating surplus before working capital changes	36,805,217	32,672,183
Increase in deposits and prepayments	(177,843)	(264,016)
Decrease in other payables and accruals	(1,292,845)	(15,538,074)
(Decrease)/increase in contract gratuity payable	(437,972)	836,344
Net cash inflow from operating activities	34,896,557	17,706,437

9 Approval of accounts

The accounts were approved by The Ombudsman on 25th May 2005.

History in Brief

Date	Event
1988	
20 July	The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")
1989	
1 February	The COMAC Ordinance was enacted First Commissioner Mr Arthur Garcia, JP assumed office
1 March	The Office of COMAC became operational
15 November	COMAC became a member of the International Ombudsman Institute ("IOI")
1994	
1 February	Second Commissioner Mr Andrew So, JP assumed office
24 June	The COMAC Ordinance was amended : • to enable the public to lodge complaints directly, instead of by referral from LegCo Members • to extend the jurisdiction to some major statutory bodies • to empower the Commissioner to publish anonymised investigation reports • to empower the Commissioner to initiate direct investigation
30 June	Advisers were appointed to provide expert advice and professional opinion
1 July	Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」
1 October	First batch of contract investigation officers was recruited
1995	
1 March	Jurisdiction was extended to investigation into alleged breach of Code on Access to Information
24-26 October	The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium
1996	
25 January	Use of Internal Complaint Handling ("INCH") mode was introduced to resolve complaints
1 March	Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

History in Brief

Date	Event
16 April	The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member
20-29 April	Exchange programme with the China Supervision Institute was arranged
12-13 June	First Complaint Management Workshop for public officers was organised
5 September	Resource Centre was opened
24 October	The Ombudsman was elected to the Board of Directors of the IOI (until 31 January 1999)
27 December	• English titles were changed to "The Ombudsman" and "Office of The Ombudsman" • Jurisdiction was extended to investigation into complaints of non-compliance with the Code on Access to Information against Government departments not included earlier
1997	
1 April	Mediation service was launched as an alternative dispute resolution method
25 July	The Ombudsman's Awards were introduced to recognise public organisations handling complaints positively
1998	
8 May	The Ombudsman was elected Secretary to the AOA
1 July	The Ombudsman Certificate of Appreciation was introduced to knowledge complainants making special contribution towards a higher standard of public administration
1999	
1 April	Third Ombudsman Ms Alice Tai, JP assumed office
22 July	The Ombudsman's Awards were extended to recognise public officers' contribution towards better quality services
2000	
5 January	Complaints by e-mail were accepted
27 July	The Ombudsman's Awards were further extended to public officers handling complaints professionally
2 November	The Ombudsman was elected to the Board of Directors of the IOI

History in Brief

Date	Event
2001	
28 March	Telephone complaint service was introduced
1 April	Administrative systems independent of Government were instituted in preparation for delinking
19 December	The Ombudsman (Amendment) Ordinance 2001 came into operation : • to establish The Ombudsman as a corporation sole with full powers to conduct its own financial and administrative matters • to empower The Ombudsman to set terms and conditions of appointment for staff • to sever linkage with Government systems and processes • to give statutory status to mediation as an alternative dispute resolution method for processing complaints
2002	
28 March	Permanent office accommodation was acquired
6 September	Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan
16 October	The Ombudsman was elected Secretary to the IOI
2003	
12 November	Mediation training was extended to officers of scheduled organisations
2004	
7 January	As an Ombudsman in Asia Pacific Region and the first ever Ombudsman invited to speak in an international conference on "Good Governance" in Ulaanbaatar, Mongolia
1 April	Ms Alice Tai, JP, started her second term (2004 – 2009) as The Ombudsman
10 September	Ms Alice Tai was re-elected as the Secretary of the IOI
13 December	With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance



In 2004/05, the first year of my second five-year term as The Ombudsman, we are completely delinked from Government. With the last seconded civil servant returned to Government, ours is now a workforce entirely appointed by me on contract. With flexible and prudent management, our financial situation has remained safe and sound.

Despite our total independence, some in the community still labour under a misconception that we are part of Government. It is true that my Office is funded from the public purse. However, The Ombudsman Ordinance makes it clear that "the Ombudsman shall not be regarded as a servant or agent of the Government". We are most certainly not a Government department. We are an independent and impartial monitor of Government and public bodies. We are accountable to the public. In this context, we investigate without fear or favour to establish facts and to improve public services.

A point often raised with me upon my discovery of maladministration is whose head should roll and how should the culprit be punished? My Office is not a court of law. The focus of my functions is not on individual officials. My inquiries are directed at systems, solutions to problems and improvement to administration. Staff discipline is a matter for the organisation concerned.

Questions have also been raised over fluctuations in our caseload and the outcome of our investigations. The simple answer is that we do not "cook the books". Our Office has no control over the kind, or the number, of complaints coming in. Certainly, I do not attempt to control the level of substantiation or not. We investigate each case impartially and objectively, presenting the outcome of our investigation solely on the basis of our findings.

Speaking of findings, I view with considerable concern that inadequate inter-departmental coordination remains a continuing, perhaps even growing, trend among Government bureaux and departments. This was first mentioned in my Annual Report 2003 and again featured in my Annual Report last year. There are now signs of different disciplines in Government becoming more compartmentalised. Some segments of the Administration seem to be forgetting, or ignoring, that they are an integral part of one and the same Government. This is worrying. It is not healthy. It impairs not only the efficiency in public services but also the image of Government.

The Ombudsman's Review

While the main business of my Office is handling public complaints, I am delighted to see growing awareness of my powers for direct investigation. This enables me to examine, even without complaints, systematic deficiencies and systemic problems in the public organisations listed in Schedule 1 to The Ombudsman Ordinance. I probe into these areas and propose improvement in the public interest.

My authority for direct investigation has gained greater recognition this year: Time and again, there have been calls from the public, the media and politicians for me to initiate direct investigation into matters of major community concern. While I appreciate the confidence in my Office, I ensure that such matters are properly within my jurisdiction and do not intrude upon the purview of other authorities.

Last year, I indicated that with 15 years experience behind us, it is time to review the jurisdiction of The Ombudsman. This review has begun. I am examining our current Schedule of Government departments and public bodies and the restrictions on my investigative powers and purview. This will make for more effective overview of public administration. In the final analysis, my aim is for good governance and ever better service for our community.

Phasing out of Civil Servants

1.1 I first broached the subject of "delinking" with the Administration in 2001. Three years later, I can now claim that my Office is totally delinked from Government, with a workforce entirely on contract. I have released civil servants seconded from Government in phases to minimise the impact of a drastic loss of experience and expertise that may affect the operation of my Office.

1.2 10 December 2004 is a milestone in our development as we bade farewell to the last civil service secondee. The concern of the public and the Legislative Council that the independence of The Ombudsman's Office might be compromised by the secondment arrangement should be put to total rest.

Maximising Staff Resources

1.3 The number of complaints received has picked up quickly after Severe Acute Respiratory Syndrome ("SARS") in 2003 subsided. This year, we maintain a high level of incoming complaints similar to last year. To cope with the heavy caseload, we adopt flexible approaches in the deployment of manpower resources as well as allocation of cases among Investigation Teams to maximise output. During the year, we concluded a total of 5,023 complaints, compared with 4,345 last year.

1.4 I also review my establishment from time to time to streamline and adjust our staff resources to ensure our financial viability without affecting our operational efficiency and effectiveness. At the directorate level, we have decided to implement an important structural change by deleting a Principal Executive Officer post, thus reducing the number of directorate members from five to four. The investigative and administrative duties of that post have already been shared among the heads of the Investigation Divisions and the Administrative and Development Division. The division of responsibility among the remaining directorate officers was revised for clearer and better balanced distribution of duties.

1.5 For support services, we reviewed the secretarial and clerical support for the two Investigation Divisions and the teams. We found room for consolidation and re-alignment of duties. The rescheduling exercise is now in hand, to be completed in the first half of 2005. We also deleted a couple of clerical posts due to simplifying our organisation and re-engineering procedures and practices.

Fig. 1.1

Contract Staff in the Office
(as at 31 March)

	2001	2002	2003	2004	2005
Contract Staff	16 (17.8%)	58 (59.2%)	76 (83%)	83 (94.3%)	88 (100%)
Civil Servants	74 (82.2%)	40 (40.8%)	16 (17%)	5 (5.7%)	0 (0%)
Total	90	98	92	88	88

1.6 The continued employment of Temporary Case Officers ("TCOs") has helped to cater for seasonal fluctuations of caseload or to carry specific projects. Most of our TCOs have rich experience in public administration and can replenish the loss of experience due to phasing out of civil service secondees.

Staff Training

1.7 With new entrants joining our Office, we are mindful of their training needs. Our aim is to help them settle in and be fully operational as quickly as possible. To this end, we attach great importance to both induction and on-the-job training to familiarise them with our mode of operation and complaint handling process.

1.8 In the past couple of years, we steadily reduced our reliance on Government's training services. Although we still resort to some of the courses run by the Civil Service Training and Development Institute for our staff to acquire basic skills, we endeavour to develop our own programmes for specific operational needs. We have commissioned an experienced trainer to run Putonghua courses for staff during lunch breaks to cater for the increasing use of the language in answering enquiries and interviewing complainants. We are also planning to design and run our own courses to sharpen the skills of our investigators in report writing.

1.9 To strengthen communication and experience sharing, our open forums for staff will be organised every two months, starting from February 2005. Investigation teams take turns to offer topics for discussion and to lead the sessions. These forums provide an opportunity for investigators to exchange views on common features of their work or problems and solutions. The Ombudsman and the directorate take part to brief staff on the management's views on important issues and to get feedback. Topics covered during the year include:

- "Handling Complaints from a 'Human Rights' Angle";
- "The Ombudsman's jurisdiction over complaints against the Judiciary";
- "Customer Service and Staff Complaints";
- "Client Opinion Survey"; and
- "Duty Officer Scheme"

Comments and conclusions from these forums are taken seriously and where appropriate, result in revision of staff guidelines and working procedures.

Fig. 1.2



The Ombudsman briefing at an open forum

Complaints against the Office

1.10 This year, we received a total of 14 complaints against the Office, compared with 11 last year. These complaints are distinct from those directed against The Ombudsman's conclusions of complaint cases which are handled as Revived Cases (see **Chapter 5**). The former are either about staff manner or our procedures as shown in the table at **Fig 1.3**.

Fig. 1.3

Complaints Against the Office
Concluded in 2004/05

Nature	Substantiated	Partially Substantiated	Unsubstantiated	Incapable of Determination
Staff manner (including delay and negligence)	1	1	7	–
Work Procedures	–	–	2	–
Both staff manner and work procedures	1	1	1	–
Total	14			

1.11 We consider the increase a natural phenomenon and a result of the increase in complaints handled by my Office. As more citizens seek redress through our investigation, so too more came into contact with our personnel and practices. We welcome their comments on our services and suggestions for our improvement.

1.12 We draw reference from these complaints to eliminate deficiencies in our system and streamline our procedures and practices. We have also shared with our staff the lessons learned through our open forums, to strive for better services still to our clients.

1.13 On complaints about non-compliance with our performance pledges, we have upgraded our computerised Complaint Management System by installing an alert mechanism to prompt both individual case officers and their supervisors to keep track of outstanding cases that require attention. This not only helps to monitor our investigation of cases but also ensures proper and timely action by scheduled organisations to follow up our recommendations for improvement to their administration and services.

1.14 Oftentimes, however, complainants who are disappointed with our findings and conclusion of their cases revert to us not only for review of their complaints but with criticism of our staff. In such event, The Ombudsman's role has to be emphasised to them. Our function is to establish facts, in fairness to all concerned. Just because a complainant cannot accept the outcome of the case does not mean that the Office has been deficient or biased. We do not, and must not, pander to any party.

1.15 We are publicly funded and The Ombudsman must be impartial and investigate without fear or favour. This is our creed and our firm practice.

Authority and Restrictions

2.1 The ombudsman system is intended to be an alternative to judicial remedies in redressing citizens' grievances against public administrators. Appointed by the Chief Executive of the Hong Kong Special Administrative Region under The Ombudsman Ordinance ("the Ordinance"), Cap 397 Laws of Hong Kong, The Ombudsman has statutory authority to operate independently and freely without fear or favour. The Ombudsman is subject to scrutiny by the courts through judicial review.

Powers and Functions

2.2 We investigate complaints of maladministration by Government departments and public bodies listed in Schedule 1 to the Ordinance:

- to seek out the facts for justice and redress; and
- to improve the quality and efficiency of public administration.

Since 1994, The Ombudsman can also initiate direct investigation without complaints (see **Chapter 3**).

Powers of Investigation

2.3 The Ordinance empowers The Ombudsman to inquire into a complaint unless it is outside her jurisdiction or otherwise restricted under the Ordinance (see **paras. 2.13 – 2.15**). Inquiry may be by preliminary inquiries or by full investigation.

2.4 Under section 11A of the Ordinance, The Ombudsman may conduct preliminary inquiries into a complaint before deciding whether a full investigation is warranted. Section 11B empowers The Ombudsman to deal with complaints by mediation with consenting parties. Details of our preliminary inquiry and mediation service are set out in **Chapter 4**.

Fig. 2.1
Definition of Maladministration – section 2 of the Ordinance
"Maladministration" means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes –
(a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
(b) abuse of any power (including any discretionary power) or authority including any action which – (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; (ii) was based wholly or partly on a mistake of law or fact;
(c) unreasonable, unjust, oppressive or improperly discriminatory procedures

2.5 Full investigation into complaints is empowered by section 7 of the Ordinance. The law requires The Ombudsman to notify the organisation(s) concerned before commencement of a full investigation. Where preliminary inquiries or mediation point to the need for a full investigation, the parties to the complaint will be so informed.

2.6 The Ombudsman determines whether a complaint is subject to her jurisdiction. Where The Ombudsman considers it in the public interest to do so, she may continue with an investigation even if the complainant has withdrawn his or her complaint.

2.7 Like ombudsmen elsewhere, The Ombudsman has extensive investigative powers. Section 13 of the Ordinance provides powers to summon any person for examination or require such person to furnish information and produce any document or object in his possession or under his control.

2.8 Section 20 of the Ordinance empowers The Ombudsman and her officers to enter any premises of a scheduled organisation, inspect the premises and carry out on the premises any investigation within her jurisdiction.

Fig. 2.2

Powers of Investigation
• Summoning of witnesses
• Access to documents including classified documents
• Entry into premises
• Penalty for not cooperating in investigation

2.9 Under section 23 of the Ordinance, it is an offence to obstruct, without lawful excuse, The Ombudsman or her officers in the exercise of powers conferred by the Ordinance, fail to comply with their lawful requirements, make false statements or otherwise knowingly mislead them. Offenders are liable to a fine of $10,000 and to imprisonment for six months.

Investigation Reports

2.10 The Ombudsman must, under section 17 of the Ordinance, inform the complainant of the result of investigation.

2.11 The Ombudsman is empowered under section 16 of the Ordinance to report her findings, opinions and recommendations on completion of a full investigation. The organisation concerned will be given an opportunity to comment on The Ombudsman's findings. The final report will be given to the head of the organisation for information and implementation of her recommendations, where appropriate.

2.12 Unlike Court verdicts, The Ombudsman's recommendations are not binding. Yet, where the head of the organisation disagrees with her findings or refuses to accept her recommendations, The Ombudsman may consider submitting the report to the Chief Executive. Furthermore, where an organisation fails to implement or to act adequately on any of her recommendations, The Ombudsman may also report to the Chief Executive. Section 16(6) of the Ordinance requires that, within one month of such a report being submitted, or such longer period as the Chief Executive may determine, a copy of the report shall be laid before the Legislative Council.

Restrictions on Jurisdiction

2.13 The Ombudsman's purview is not all pervasive. Section 8, read with Schedule 2 to the Ordinance, specifies actions not subject to The Ombudsman's investigation, i.e. actions outside her jurisdiction.

Fig. 2.3
Examples of Actions not Subject to Investigation - Schedule 2 to the Ordinance
• Actions in relation to security, defence or international relations
• Legal proceedings or prosecution decisions
• Exercise of power to pardon criminals
• Contractual or commercial transactions
• Personnel matters
• Grant of honours, awards or privileges by Government
• Actions by the Chief Executive personally
• Imposition or variation of conditions of land grant
• Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
• Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

2.14 Government policies and professional judgments are outside The Ombudsman's jurisdiction as they are not administrative actions *per se*. However, they are often subjects of complaints. The Ombudsman would scrutinise them carefully to see if there are administrative aspects that fall within her jurisdiction.

2.15 Section 10(1) of the Ordinance prescribes restrictions where The Ombudsman shall not conduct an investigation.

Fig. 2.4
Major Restrictions on Investigation of Complaint – section 10 (1) of the Ordinance
• Complainant having knowledge of subject of complaint for more than two years
• Complaint made anonymously
• Complainant not identified or traceable
• Complaint not made by person aggrieved or suitable representative
• Subject of complaint and complainant having no connection with Hong Kong
• Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

2.16 Under section 10(2) of the Ordinance, The Ombudsman may decide not to investigate a complaint under certain circumstances.

Fig. 2.5
Circumstances Where The Ombudsman may Decide not to Investigate – section 10 (2) of the Ordinance
• Investigation of similar complaints before revealed no maladministration
• Subject of complaint is trivial
• Complaint is frivolous or vexatious or is not made in good faith
• Investigation is, for any other reason, unnecessary

2.17 My Office critically examines all in-coming complaints to establish whether they come within my statutory purview and whether they have a *prima facie* case to warrant investigation. Where The Ombudsman decides not to conduct or to discontinue an investigation, she must inform the complainant of her decision with reasons. Where possible, we still try to help the complainant by pointing out the appropriate avenues for redress.

2.18 It is at times not easy to demarcate the boundaries prescribed in Schedule 2 to the Ordinance. I take a liberal approach and "screen in" all points administrative in nature for scrutiny and inquiry where appropriate. My aim is to take every opportunity to identify areas for improvement in public administration.

2.19 Some of the restrictions prescribed by section 10(1) of the Ordinance are discretionary. I exercise discretion with caution and in accordance with the provisions of the law in deciding whether or not to conduct, or to discontinue, an investigation.

Need for *Prima Facie* Evidence

2.20 From time to time, members of the public send us messages to express dissatisfaction with certain organisations but produce no concrete details. While our role requires us to investigate complaints, we cannot do so unless complainants at least tell us what has actually happened, how they are aggrieved and by what or whom. A mere expression of opinions or suspicion about something amiss does not make a *prima facie* case justifying our investigation. We would, therefore, have to ask the complainant for further details to support the complaint before deciding whether to use our limited resources to pursue it.

Secrecy Requirement

2.21 We are duty-bound to explain to the public how we go about our work for a proper understanding of our procedures and practices. However, all members of my Office and I, as well as my advisers, are bound by The Ombudsman Ordinance, under penalty, to maintain secrecy over specific cases. We must keep strictly confidential all matters that come to our knowledge in the exercise and execution of our functions. The aim is to ensure any person or organisation providing information to our Office can do so without reserve and without fear of possible consequences from the disclosure of their identity or related data. Breach of this statutory requirement is a criminal offence, which carries a maximum fine of $50,000 and imprisonment for two years.

2.22 From time to time, Legislative Councillors and civic leaders, members of the public and the media refer complaints to me, expecting to be informed of the progress of our processing. We are grateful for their support. However, we are bound by law not to discuss with, or to disclose to, third parties the processing or

the outcome of any case. Except for official publication of an investigation report in anonymised form, we cannot and will not respond to any enquiry on individual complaints other than from the parties concerned. Again, I thank all who have referred cases to my Office and appreciate their understanding of and respect for our secrecy code.

2.23 Before starting inquiries, we always seek the complainants' consent to obtain their personal data from the organisations concerned and to reproduce their documents to relevant organisations for processing their cases. This safeguards the privacy of their personal data. Where a complainant does not give consent, we may not be able to pursue his/her case.

2.24 The secrecy code is the cornerstone of the ombudsman system. It is strictly observed by all of us in discharging our duties.

The Ombudsman's Discretion

2.25 The Ordinance gives The Ombudsman discretion to undertake or not, continue or discontinue an investigation. Exercise of this discretion enables me to make the best use of our resources for the benefit of the community.

2.26 Owing to my statutory independence, my decision on any case is final. Anyone not satisfied with my decision may request my Office to review the case. If the request is acceded to, I will normally assign a different investigator to assist in the review for the sake of objectivity. Alternatively, the complainant may apply to the Court for judicial review.

Jurisdictional Review

2.27 In my Annual Report of 2004, I stated that with 15 years behind us since our establishment in 1989, it was time to review the functions and purview of The Ombudsman. I am pleased to say that such a review of The Ombudsman's jurisdiction has commenced. Based on our operational experience and practices of my counterparts overseas, we are examining the need for and feasibility of the points below for proposals to the Administration:

(a) adding more organisations to Schedule 1 to the Ordinance to place them within my purview;

(b) relaxing some of the restrictions on my investigative powers in Schedule 2 to the Ordinance; and

(c) resolving some of the difficulties or uncertainties encountered by our officers in discharging their duties.

3.1 Since June 1994, The Ombudsman may initiate direct investigation in the absence of complaints. Paragraph (ii) of section 7(1) of the Ordinance gives her a free hand to probe into matters of public interest or community concern that call for review of administrative systems and procedures or practices. This is an important function because it enables me to conduct independent reviews at a macro level, as opposed to individual cases, examine systems with systemic problems or widespread defect and recommend measures for improvement.

Aims and Objects

3.2 Our direct investigations aim to :

(a) follow through systemic problems which investigation of individual complaints cannot solve;

(b) eliminate problems and obviate complaints; and

(c) address fundamental administration flaws believed to be the underlying cause for complaints.

3.3 With direct investigation, we endeavour to improve the quality of public administration, enhance transparency and promote accountability. This should help Government and public bodies to appreciate the needs and expectations of an ever more discerning and increasingly demanding community. Meanwhile, it opens up the operations of public administration for closer scrutiny and clearer understanding.

Selection of Issues

3.4 Selection and monitoring of areas for direct investigation is carefully done by a standing panel chaired by my Deputy and comprising the two Assistant Ombudsmen and our small Direct Investigation Team.

3.5 A direct investigation may be prompted by topical issues or repeated complaints on particular matters and new or revised Government policies. Such matters are generally :

- of community interest, aspirations or expectations;
- of considerable scale or in some number;
- of macro magnitude and topical concern;
- not under examination by another agency; and
- not for the courts or tribunals.

3.6 I am grateful for the public confidence in my Office, as evidenced by calls for me to initiate direct investigation when public issues arise. Notable examples this year include:

(a) sale of the Hunghom Peninsula Home Ownership Scheme estate; and

(b) institution of the Link Real Estate Investment Trust for privatisation of Housing Authority shopping centres and car parks.

3.7 However, restrictions by the Ordinance preclude my action in relation to contractual or commercial transactions and decisions to do with any interest in Government land or value for money in the use of resources. I am acutely aware of these barriers. I envisaged that any direct investigation conducted by me into the two issues above was likely to raise more questions than I could answer within my purview. I was, therefore, content to leave them to other more suitable authorities.

Investigation Methodology

3.8 My statutory powers for direct investigation are similar to those for inquiries into complaints. However, unlike individual complaints, it is our established practice to declare publicly the initiation of direct investigation and invite views from relevant sectors as well as the community at large.

3.9 Before we formally launch a direct investigation, we may at times conduct an initial assessment ("DI assessment"). For this purpose, we research relevant information publicly available from, say, annual reports and homepages, legislation and media reports. We may also seek information from the organisations direct. If such assessment points to the need for further scrutiny, I will formally notify the heads of the organisations concerned before making a public declaration of a direct investigation. Invariably, they pledge cooperation to facilitate our investigation.

3.10 Where our DI assessment finds no significant maladministration, or proactive improvement has been made by the organisations concerned, we will not initiate a direct investigation but simply forward our DI assessment report to the organisations for comment. Such report outlines the background to the issue, an appraisal of public concern, our observations on the role and action (especially any remedial action) of the organisation(s) concerned and our recommendations.

3.11 While not involving in-depth investigation, such assessments do analyse matters of wide public interest and provide positive pointers for improvement. For example, we conducted an assessment on the information provided in the Inland Revenue Department ("IRD")'s *Assessment and Demand for Tax* ("the notice"). We found that the notice did not give enough information on the calculation of the tax payable, resulting in some taxpayers being unable to reconcile the amount they thought they had to pay and the amount actually charged by IRD. Some of the *Assessor's Notes* on the reverse page of the notice were also difficult to comprehend. While the issue does not merit further scrutiny, we suggested improvement measures. IRD has since reviewed to improve services.

Investigations over the Years

3.12 Since conferment of powers for direct investigation in 1994, this Office has completed 51 direct investigations resulting in 700 recommendations (see **Annex 6**). We request the organisations concerned to report progress every six months for monitoring their implementation of our recommendations until the recommendations are fully implemented.

3.13 Over the last five years, 25 direct investigations have been undertaken :

Fig. 3.1

Direct Investigations over Last Five Years

2000/01	5
2001/02	4
2002/03	6
2003/04	5
2004/05	5

3.14 This year, apart from five direct investigations, my Office completed six DI assessments.

Fig. 3.2

Direct Investigation Reports Published in 2004/05

Published	Subject
20 May 2004	2003 Priority arrangements for surplus teachers in aided primary schools
30 June 2004	Enforcement of the Building Management Ordinance
26 August 2004	Enforcement action on unauthorised building works in New Territories exempted houses
4 November 2004	Administration of urn grave cemeteries
16 December 2004	Bloodworms in public swimming pools

Fig. 3.3

Direct Investigation Assessments Completed in 2004/05

Completed	Subject
2 April 2004	Action against the burning of candle wax at Mid-Autumn Festival
30 June 2004	Information provided for personal tax assesment
30 July 2004	The use of bilingual information materials
24 August 2004	Enforcement of demolition orders
26 November 2004	Repair of external wall cladding at a Home Ownership Scheme estate
4 March 2005	Administration of squatter control

Fig. 3.4

Direct Investigations in Progress

Declared	Subject
26 August 2004	Administration of the Mid-Levels administrative moratorium
4 November 2004	Administrative arrangements for market stall auction
20 January 2005	Supervision of property services agents by the Housing Department

3.15 In general, the organisations concerned have been cooperative during the investigation process, as they understand that our aim is to help them improve their systems, procedures and practices for better administration. We are, of course, also grateful to the media and the public at large for their support for our findings and recommendations when they are published.

Lodging of Complaints

4.1 Complaints come to our Office in different modes, as indicated in the table below:

Fig. 4.1

Mode of Lodging Complaints

Mode	2001/02	2002/03	2003/04	2004/05
In person	260	425	324	396
In writing -				
by complaint form	828	1,270	722	934
by letter through post	1,116	682	1,634	1,599
by letter through fax	664	978	972	615
by letter through e-mail	360	613	742	821
By telephone	508	414	267	289
TOTAL	3,736	4,382	4,661	4,654

4.2 Complaint letters or completed complaint forms, obtained from our Office or downloaded from our homepage, may come to us by post or by fax. We also accept complaints via e-mail, though subsequent correspondence has to be by post to ensure security of information and to guard against unintended disclosure, unless the complainant can communicate electronically with digital signature under proper electronic certification.

4.3 We have a Duty Officer Scheme whereby investigation officers serve on roster to meet individuals who come to our Office to make enquiries or lodge complaints. Where the complainants need assistance in writing up their cases, our duty officer will interview them and take down details of their cases direct, for their verification later by post where necessary.

4.4 For simple initial cases, we have arrangements for complaints by telephone. The conversation is recorded on tape and then written up for verification with the complainant by post. To avoid overloading the telephone lines, such complaints should generally be made within 15 minutes and involve not more than two organisations or a great deal of documentary evidence.

4.5 Regardless of the mode, complainants must give their name and address to ensure that they are identifiable and traceable. Under The Ombudsman Ordinance, we cannot handle complaints which are made anonymously or where the complainant cannot be identified or traced (**Fig. 2.4**). To facilitate case handling, complainants are additionally requested to provide their contact telephone number so that clarification can be made readily where necessary. The Ordinance also requires us to be satisfied that complainants are the aggrieved parties.

Assessment

4.6 My counter staff, duty officers and Assessment Team form the front-line of my Office. They receive visitors, answer telephone calls and scrutinise all in-coming complaints and enquiries. Where it is evident from the outset that a matter falls outside my purview (**Fig. 2.3**), is subject to restrictions (**Fig. 2.4**) or is not to be investigated at The Ombudsman's discretion (**Fig. 2.5**), we aim to notify complainants within 15 working days. (See **Fig. 5.2** and **Annex 4** for our performance pledges.) Where possible, we try to help and advise where and how they may seek assistance or redress elsewhere. For complaints screened out because the complainants are anonymous or unidentifiable, we do not simply ignore them but treat them as "potential cases" for gathering information for indications of any pattern of systemic or systematic maladministration. This will provide insight for our complaint investigation as well as identifying possible topics for direct investigation.

4.7 Complaints within my purview are "screened in" for examination by one of four designated investigation teams. Each team, headed by a Chief Investigation Officer working to one of my two Assistant Ombudsmen, processes cases on a number of the departments and public bodies in Schedule 1 to the Ordinance.

Preliminary Inquiries

4.8 We conduct preliminary inquiries under section 11A of the Ordinance to determine whether a full investigation is necessary. Such inquiries may take the form of Internal Complaint Handling Programme ("INCH") or Rendering Assistance/Clarification ("RAC"). Often, the matters under complaint can be thus resolved or clarified without further investigation.

Fig. 4.2

Preliminary Inquiries

Type	Method	Cases concluded
I N C H	With the complainant's consent, a simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request the organisation to provide specific information in its reply, monitors the progress and scrutinises the reply, intervening where it is not satisfactory. In the event of the latter, we may take up the case by RAC or full investigation.	209
R A C	The Office collects key facts relating to the case. If the facts fully explain the matter under complaint, we will present the findings with observations to the complainant and suggestions to the organisation concerned on remedial action and improvement measures, where appropriate. If further inquiries are called for, a full investigation will be conducted.	1,664

4.9 Preliminary inquiries are an important expedient for processing complaints of varying complexity. They generally take shorter time with less formalities for completion. Nevertheless, as with full investigations, my Office will similarly make suggestions for improvement or remedy and monitor their implementation by the organisations concerned. In 2004/05, a total of 1,873 complaints were resolved by preliminary inquiries (**Fig. 4.2**).

Mediation

4.10 With complaints that involve only minor, or no maladministration, The Ombudsman may process by mediation under section 11B of the Ordinance. This is a form of alternative dispute resolution entered into voluntarily by mutual consent from both the complainant and the organisation under complaint. Here, the two parties meet to explore a mutually acceptable solution to the matter under complaint. Our investigators, who have undergone training as mediators, facilitate the process with impartiality.

4.11 If mediation does not result in resolution of the complaint, the Office may initiate preliminary inquiries where warranted. In such event, an investigator other than the mediator will be assigned to handle the case afresh. This is to ensure impartiality as well as confidentiality of the information provided by the parties during mediation.

Full Investigation

4.12 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, I will direct a full investigation. This necessitates extensive and intensive probing for comprehensive evidence collection. We go to original documents and subject files. We go on site visits. We seek statements from relevant persons and may interview them in person. At times, we consult members of our Panel of Professional Advisers, all experts of repute with good standing in the legal, medical and engineering fields (see **Annex 13**) whom I have appointed under section 6A of the Ordinance to advise and assist me.

4.13 When my draft report on a full investigation is ready, the organisation concerned is given every opportunity to comment and to make representations. Individuals subject to our criticism are specifically requested to explain and be heard. In recommending administrative remedies, we aim to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report to me at regular intervals the progress of their implementation of my recommendations.

Internal Monitoring

4.14 I am assisted by my Deputy, two Assistant Ombudsmen and four teams in investigating complaints and monitoring implementation of our recommendations. I have delegated to each level specific authority within which they act on my behalf. As a general rule, the work of investigation officers is carefully vetted and monitored by their team leaders. Reports and replies are scrutinised by the directorate and then finalised personally by me.

4.15 We have a computerised complaint management system for ready information on individual cases. This facilitates compilation of statistics and documents the progress of individual cases. With its assistance, my directorate and I can closely monitor the processing of cases.

4.16 In this context, my investigation teams work under close scrutiny. My Deputy and the Assistant Ombudsmen hold meetings regularly with individual teams, to keep tabs on cases under processing. These sessions provide a forum for frank exchange of views and analysis of facts, debate on contentious points and directions for follow-up action. Above all, they ensure consistency in case work and offer opportunities for sharing experience.

4.17 To keep myself well posted on our operations, I attend meetings of each team at least once a month. In this way, I directly guide investigations, clear uncertainties and determine strategies on complex cases.

4.18 From time to time, I convene open forums to update staff on concepts and approaches, principles and philosophy on matters within my purview (see **Chapter 1**).

Outcome of Investigation

4.19 On conclusion of each full investigation, the complaint is classified according to how far the allegations of maladministration have been found to be true : "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts of maladministration may be identified in the course of our investigation. Such cases are classified as "substantiated other than alleged", to reflect the gravity of the maladministration thus unearthed. The definitions of outcome classification are given in the **Glossary of Terms** (see **Annex 2**). The results of full investigations are tabulated in **Table 8**.

4.20 The outcome of an investigation depends entirely on whether the allegations are borne out by facts. Our investigators endeavour to examine each complaint objectively and impartially, establish the facts accurately, analyse each aspect carefully and arrive at a fair conclusion. We have no control over, and certainly do not attempt to control, the nature or outcome of complaints : we only determine the truth. This is reflected by the fluctuating proportions of cases substantiated (fully, partially or other than alleged) and unsubstantiated over the years. For example, we provide the figures for the past five years:

Fig. 4.3

Percentage of Substantiated and Unsubstantiated Cases#

Cases / Year	Substantiated*	Unsubstantiated
2000/01	42.9%	49.7%
2001/02	84.9%	12.7%
2002/03	43.6%	54.8%
2003/04	14.4%	83.1%
2004/05	64.0%	36.0%

Does not include "withdrawn/discontinued" or "incapable of determination" cases. Hence, cases "substantiated" and "unsubstantiated" may not add up to 100%.

* *Includes also "partially substantiated" and "substantiated other than alleged" cases.*

Cases Discontinued

4.21 Although most cases not within my purview are screened out at the assessment stage, some have to be discontinued during preliminary inquiries or even full investigation. There were 977 discontinued cases this year, a significant increase compared with 246 in the previous year. To identify possible reasons for significant fluctuations in the number of

discontinued cases, this year we started to record in our computer database the reason for discontinuation in each case. A breakdown of discontinued cases by the major reasons is provided below.

4.22 The statistics show that by far the most significant is the complainants' failure or refusal, at the outset, to consent to our obtaining their personal data from, and/or our copying their correspondence to, the organisations concerned for further processing. Another common feature is the complainants' failure or inability to provide adequate information to establish a *prima facie* case to justify our pursuing their case. In some cases, the complainants simultaneously lodge their complaints with the organisations concerned direct and the latter have either already answered satisfactorily or taken appropriate remedial action. In yet other cases, the complaints are found to be outside our jurisdiction or within the restrictions under the Ordinance after clarification during our inquiry or investigation process.

Code on Access to Information

4.23 In March 1995, Government introduced an administrative Code on Access to Information on a pilot basis in furtherance of open and accountable government. The Code has been extended progressively since December 1996 to all Government bureaux and departments.

4.24 Where a bureau or department does not comply with the Code, an applicant may lodge a complaint with me to seek a review of the initial decision by the organisation in receipt of the request for information. In the past five years since 2000/01, we have dealt with 22 such complaints.

Systemic Issues

4.25 In the course of processing individual complaints, we often identify "patterns" or continuing problems that call for a more global review and determined revamp of practices.

Fig. 4.4

Discontinued Cases

Reason for Discontinuation	No. of Cases	%
Complainant's failure or refusal to consent *	549	56.2
Complainant's failure to establish *prima facie case*	239	24.5
Remedy/reply by organisation	19	1.9
Outside jurisdiction/restriction after clarification	16	1.6
Others (e.g. demise of complainant; complainant merely expressing opinions)	154	15.8
TOTAL	977	100

* *For inquiries, a complainant's consent is required for reproduction of materials to, and obtaining personal data from the organisations concerned.*

Fig. 4.5

Complaints Relating to Code on Access to Information since 2000/01

2000/01	4
2001/02	1
2002/03	3
2003/04	9
2004/05	5

Seepage : Perennial Cause for Complaint

4.26 This perennial problem has continued to engage our attention in the past three years, when we highlighted the need for more effective inter-departmental coordination and the importance of cooperation among neighbours. Seepage is basically a building management matter, which should be resolved by the owners of the premises where the cause of seepage originates. Where it causes environmental nuisance, public hygiene or building safety risks or wastage or contamination of potable water supply, Government has a statutory responsibility to abate the problem. In this connection, three departments are involved – Food and Environmental Hygiene, Buildings and Water Supplies – each having a specific role for different aspects of seepage. Where seepage occurs in public housing, the Hong Kong Housing Authority and the Housing Department have delegated authority to deal with the cases.

4.27 Many seepage-related complaints have been lodged with our Office when none of the departments could find evidence that would allow them to invoke their statutory powers to deal with the problem. While there was no maladministration, the problem often remains unresolved after a round of inter-departmental referrals. This leaves seepage still a problem for the victim, dissatisfied and critical of Government despite the departments having done their duty faithfully under their respective laws and with cooperative coordination.

4.28 To further improve inter-departmental arrangements for responding to seepage cases, the Buildings Department and the Food and Environmental Hygiene Department set up a joint office in December 2004 to deal with them. Its operation will be reviewed in mid-2005. More recently, Government has announced that it is considering a proposal to set up a tribunal for building management matters, including seepage issues. It will be consulting the public on this in the latter half of 2005.

4.29 We welcome these developments and await the outcome with keen interest. We firmly believe that unless risk to public health or safety calls for emergency action by Government, private building management is for property owners themselves with Government facilitating and assisting where necessary.

Contracting-Out of Services

4.30 My 2004 Annual Report highlighted the trend for many Government departments to contract out services and a marked rise in the number of public complaints about such contract services and inadequate supervision over contractors by departments. In this connection, we initiated a direct investigation into the supervision of property services agents by the Housing Department on 20 January 2005.

Inter-departmental Co-ordination

4.31 In the year under report, my Office handled a number of complaints that clearly

called for greater inter-departmental co-ordination. One case in particular concerned the display of laundry in public places for drying, not only marring the cityscape but also making for inconvenience or even risk to pedestrians and motorists. The six Government departments involved were unable to get their acts together to solve the problem. Except for a District Office of the Home Affairs Department, which commendably did take up a coordinating role, none of the other five departments took the initiative or accepted the responsibility to tackle the problem. Yet, they were prepared to take action in joint operation coordinated by the District Office. The case showed up the five departments as unwilling to assume sole responsibility or a leading role in solving the problem.

4.32 In concluding the case, the Acting Ombudsman had to seek the intervention of the Chief Secretary for Administration to address the issue (see summary of case no. OMB 2004/0673, 0829, 0830, 2005, 2006 and 2007 in **Annex 12**.) In the event, the Home Affairs Department has been tasked to coordinate Government action.

Reluctance to Take Enforcement Action

4.33 Some Government departments remained reluctant to take enforcement action against individuals or companies who had refused, despite repeated notices or even warnings, to comply with lawful requests by public officers carrying out statutory duties. These departments tend to focus on the difficulty of collecting adequate evidence for successful prosecution or deficiencies in their statutory authority.

4.34 In a case involving prosecution against unauthorised free bus services, my Office questioned the Transport Department view that prosecution of the service operators would necessitate the production of evidence to establish the same driver having driven the same bus for a certain number of days. As the relevant statutory provision did not seem to support its view, we recommended that Transport Department seek legal advice. The Department maintained that its view had been based on the advice of the Department of Justice in 2002. Having examined this advice, we noted that it had been given in the context of possible prosecution against the driver as opposed to the operator. The Department subsequently admitted that prosecuting the operator did not require production of the evidence above.

4.35 Another example concerns prosecution of unauthorised private coaching in public swimming pools. There have been numerous complaints about failure of the Leisure and Cultural Services Department ("LCSD") to prosecute for blatant unauthorised commercial activities. However, each time LCSD had held that no prosecution could be instituted, even where the coaching service had actually been advertised at the pool complex. LCSD considered it necessary for actual payment to take place within the pool complex for such coaching service to be actionable; but claimed this was difficult to catch. It was only after repeated requests from our Office that LCSD eventually sought legal advice. In the event, LCSD was advised that actual payment within the precincts of the swimming pools was not a prerequisite for prosecution as long as there had indeed been payment for the coaching service and the commercial transaction completed by the provision of such service in the swimming pool.

Our View

4.36 We watch for patterned issues, as they often reflect an unhealthy culture within an organisation or indicate some systemic and systematic problem. Where appropriate, we conduct a direct investigation into the subject or take it up with the senior management of the organisation concerned for the issue to be properly addressed.

4.37 We do not concern ourselves with decisions of prosecution, as they are outside our jurisdiction. However, where a complaint against such decisions suggests a possible mistake of law and the matter is of public interest, we will look into it.

Caseload

5.1 Caseload for the year is summarised below:

- 11,742 enquiries received;
- 4,654 complaints received; and
- 5,023 complaints concluded.

After years of continuous increase in the number of complaints received this year saw a drop in the figure, from 4,661. However, our pace of processing and concluding cases rose to a record high, with 15.6% increase compared with the figure of 4,345 in the previous year.

Fig. 5.1

Equiries and Complaints for the Past Five Years

Year *	Enquiries	Complaints	
		Received	Concluded
2000/01	11,821	3,709	3,476
2001/02 (10 1/2 months)	12,900	3,736	3,790
2002/03	14,298	4,382	4,370
2003/04	12,552	4,661	4,345
2004/05	11,742	4,654	5,023

* *The period of Reporting Year has changed since 2001/02 (see footnote to Table 1).*

Performance Pledges

5.2 We aim to serve our clients on the performance pledges below :

Fig. 5.2

Performance Pledges

Enquiries	**Range in Response Time (depending on complexity)**
By telephone or in person	Immediate - 30 minutes
In writing	5 - 10 working days
Complaints	**Range in Response Time (depending on complexity)**
Acknowledgement / initial assessment	All complaints will be acknowledged and initially screened – 5 - 10 working days
Cases concluded - Cases outside jurisdiction or under restriction - Other cases	 Full reply declining investigation – 10 - 15 working days Full reply concluding the case – 3 - 6 months
Group Visits and Talks	**Response Time**
Requests for guided group visits	Within 5 working days
Requests for outreach talks	Within 10 working days

5.3 Whatever the volume of complaints received, we endeavour to complete processing within our pledges. This year was no exception.

Fig. 5.3

(a) Response Time for Acknowledgement/Initial Assessment

	Response Time		
Year *	Within 5 working days	Within 6-10 working days	More than 10 working days
2000/01	100.0%	0	0
2001/02 (10 1/2 months)	92.7%	5.8%	1.5%
2002/03	77.6%	11.8%	10.6%
2003/04	66.2%	30.7%	3.1%
2004/05	94.0%	4.2%	1.8%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction

	Response Time		
Year *	Within 10 working days	Within 11-15 working days	More than 15 working days
2000/01	80.8%	18.6%	0.6%
2001/02 (10 1/2 months)	58.9%	37.6%	3.5%
2002/03	60.7%	37.1%	2.2%
2003/04	71.5%	22.1%	6.4%
2004/05	62.6%	34.4%	3.0%

(c) Processing Time for Other Cases Concluded

	Response Time		
Year *	Less than 3 months	Within 3-6 months	More than 6 months
2000/01	50.6%	44.0%	5.4%
2001/02 (10 1/2 months)	52.2%	38.5%	9.3%
2002/03	57.5%	39.7%	2.8%
2003/04	51.1 %	45.7%	3.2%
2004/05	43.3%	53.7%	3.0%

* *The period of Reporting Year has changed since 2001/02 (see footnote to Table 1).*

5.4 The number of completed cases not meeting the performance pledges during the reporting period was 92 (or 3.0%), compared to 78 (or 3.2%) for the previous reporting year. Factors contributing to longer processing time included one or more of the factors below:

(a) highly complex cases necessitating more elaborate investigation process;

(b) voluminous documents (e.g. some running into some hundreds of pages) requiring extra time to examine and distill for relevant information;

(c) new developments or supply of further material emerging mid-stream; and

(d) challenges, by complainants or organisations concerned.

Challenges

5.5 Organisations and complainants occasionally challenge our decisions or actions. While such challenges inevitably prolong the processing time of cases, they do help us keep our procedures and practices under critical scrutiny to ensure that they are proper and reasonable.

Jurisdiction

5.6 In my 2004 Annual Report, I raised the subject of personnel matters. We had a case where the Civil Service Bureau had been processing a discipline case for years with no prospect of concluding it, thus leaving the persons concerned in great anxiety. Aware that personnel matters are outside our jurisdiction, we considered it our duty to serve our clients and so questioned whether even straightforward omissions or delays in personnel matters were out of bounds to us. Legal advice has since confirmed that the Ordinance, as now worded, does preclude our handling any aspect whatsoever, including even inordinate delay in action on personnel matters. This raises the question whether the Ordinance might be unduly restrictive in this respect.

5.7 However, I must abide by the law. Meanwhile, I will continue to explain to complainants who criticise me for not taking up their case of evidently gross maladministration.

5.8 With other cases which I screen out with specific reasons, some complainants just would not accept that their cases fall outside my jurisdiction. Wherever practicable, we redirect them to the appropriate authorities or channels for advice, assistance or redress.

Revived Cases

5.9 From time to time, complainants dissatisfied with our findings or my conclusion raise objections, particularly if their complaints are found to be unsubstantiated. In the reporting period, we received 334 requests for review, compared to 359 for the last year. The decision on the case was varied after review in eight cases, compared to 14 for the last year.

5.10 We treat each and every objection as an appeal. We faithfully review the case for fresh evidence or new angle. Where new information comes to light, we re-open investigation. We endeavour to address all their points in our response.

5.11 Special procedures apply in the handling of revived cases. Whilst an initial investigator will be required to comment on the complainant's grounds for review, the actual review will be carried out by another investigator or by the Chief Investigation Officer. As a rule, draft replies to requests for review are scrutinised by my Deputy and, as with all initial cases, finally approved by me before issue.

Fig. 5.4

Revived cases

Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	2	–	6	–	–	8
Decision upheld	–	299	–	–	27	326
						334

5.12 However, most complainants seeking a review tend to reiterate their arguments and simply express dissatisfaction over my conclusion. Many were just unhappy not to have their way with the organisation concerned. Our experience shows that in such cases, factors prompting the complainants to seek review may be summarised as follows :

(a) rising expectations of the quality of public services;

(b) an intuitive conviction or their complaints being justified;

(c) misunderstanding, or inadequate knowledge of practices or policies of the organisations under complaint;

(d) an expectation of The Ombudsman advocating only the complainant's cause; and

(e) a desire to put pressure on the organisations concerned.

5.13 Some dissatisfied complainants have raised allegations against individual investigation officers for being biased, incomplete or incompetent. As all investigation reports are subject to my personal approval, such allegations must be seen as complaints against my decisions, not my officers.

5.14 A number of persistent complainants have chosen to vent their discontent and objections by a continuous stream of letters or numerous repeated calls to my staff at different ranks. We understand, and we do sympathise with, their sentiments. However, our primary duty is to establish facts and to ensure fairness to both the complainants and the organisations concerned. This is the spirit and the intent of the ombudsman system. It does not accord with justice or proper use of public resources to enter into endless debate over the same points. As a general rule, we will review on the basis of new evidence or fresh points but we do not respond indefinitely to repeated requests for review of my decision. We certainly do not have the resources or capacity to reply repeatedly to the same case again and again.

Judicial Review

5.15 Apart from asking The Ombudsman to review decisions, individuals or organisations may apply to the court for judicial review. This is a significant provision since, in view of my statutory independence, my decision on a case is final.

5.16 This year, a complainant who remained dissatisfied with my decisions after I had on his request reviewed his case four times, applied

for judicial review on my last review. My decision in question was that the facts and arguments provided by the complainant for my fourth review were essentially a repetition of those presented before; hence, there was nothing I could add or should do.

Representations

5.17 I am required by law to inform organisations, normally in the form of draft investigation reports, of any criticism or adverse remarks against them or their staff. Now and then, organisations raise reservations or even take issue with our observations, especially when the complaints are substantiated. We always provide organisations and their officers ample opportunities to make representations. Such representations from, and at times meetings and hearings with, organisations and officers criticised in our draft investigation reports are common fare for my investigators. Where representations are reasonable, we faithfully incorporate into the final report. Where they cannot be accepted, we still record those comments with our reasons for non-acceptance.

5.18 Occasionally, we find officers criticised by us in dispute with their employer organisations over the issues from which our criticism stems. In such cases, we are particularly cautious in distilling indisputable facts and steer away from internal staff disputes when finalising our conclusions.

Secrecy vs Data Privacy in Evidence Collection

5.19 In the course of our inquiries, organisations may refuse to provide material for our examination, notably on grounds of secrecy or data privacy. Invariably, we explain our statutory right to access any information relevant to a case. I am grateful that generally all organisations do cooperate with my Office, although occasionally with some persuasion.

5.20 As explained in **Chapter 2**, the secrecy code imposed by the Ordinance is the cornerstone of the ombudsman system and enables us to obtain essential information for effective investigation. We also abide by the requirements of the Personal Data (Privacy) Ordinance ("PDPO") and entertain personal data access requests as long as they do not breach our statutory secrecy code. As a rule, for compliance with the secrecy requirement, we cannot accede to requests for copies of documents collected during our investigation, whether or not they contain personal data of the requester. The Privacy Commissioner has accepted this as exempted under section 58(1)(d) of the PDPO.

5.21 In principle, we promote transparency and accountability of administration. However, we have a statutory duty to safeguard the interests of our clients and the need for confidentiality by organisations involved in our inquiries for them to discharge their functions properly. At times, this results in our being criticised by those seeking to access information held by my Office.

Organisational Culture

5.22 In the 2004 Annual Report, I noted that cases concerning the Lands Department indicated some deeper problem with its organisational culture and had raised this personally with the Director of Lands. I am delighted to report that he responded positively. He directed the organisation of a "hub management" workshop for his directorate and other staff, to encourage more proactive initiative to cooperate with other departments and organisations. His Department has since been more forthcoming towards inquiries.

Nomination of Liaison Officers

5.23 In processing complaints, we request heads of the organisations concerned to nominate suitable officers to be our contact for liaison and efficient handling of the case. We generally respect nomination of the department head. Occasionally, we find some of the liaison officers nominated to be not fully conversant with or representative of the views of the organisation. Where this happens, we have to take it up with the top management to ensure that the officers are fully briefed of the organisation's position on the matter. On a couple of occasions, we had later found the nominated liaison officers to have been actually the subject under complaint, resulting in potential or perceived conflict of interest. This is not satisfactory and we have raised with the heads of the departments concerned: e.g. Education and Manpower Bureau and Housing Department.

Our View

5.24 We regard challenge of our views or conclusions as a healthy reminder to heighten our vigilance and to enhance our professionalism. We endeavour to ensure that our investigations are thorough and impartial. We do not bow to pressure, submit to irrationality or aid and abet in personal vendetta. Open administration and quality service, these are what we work for and foster in the public interest.

Major Forms of Maladministration

6.1 As in 2003/04, this year complaints against "error, wrong decision/advice" (24.0%) topped the list of cases concluded, followed by "failure to follow procedures, delay" (9.4%). In other words, the public sees these as the two most common forms of maladministration. Meanwhile, complaints found to be substantiated or partially substantiated by full investigation[1] were commonly "failure to follow procedures, delay" (27.9%), closely followed by "disparity in treatment, unfairness" (21.6%). The six major categories of complaints, by nature of complaint, are listed in **Fig. 6.1**.

The Ombudsman's Recommendations

6.2 The Ombudsman Ordinance requires The Ombudsman to report findings, to give opinions with reasons and to make recommendations after an investigation. My recommendations fall broadly into two categories, namely :

(a) Redress of grievances –

to right specific wrongs, including remedial measures, immediate and longer-term;

(b) Administrative improvement –

to improve the administration of an organisation in general or in specific areas, such as changes to systems, procedures and practices for removing administrative errors, loopholes or deficiencies.

As a rule, I cannot and do not interfere with policies. I respect the relevant authorities as guardian of their policies. However, I do from time to time comment on policies, to help Government focus on possibly outdated aspects or to generate public debate.

Fig. 6.1

Nature of allegation/ maladministration identified	% among all concluded cases@	% among all acts of maladministration substantiated#
Error, wrong decision/advice	24.0%	9.9%
Failure to follow procedures, delay	9.4%	27.9%
Negligence, omissions	7.6%	9.9%
Disparity in treatment, unfairness	7.4%	21.6%
Lack of response to complaint	6.4%	8.1%
Faulty procedures	6.2%	5.4%

@ *A total of 5,023 were concluded in 2004/05, including cases outside jurisdiction, restricted or concluded after preliminary inquiries, mediation or full investigation (see Table 1).*

111 allegations were substantiated after full investigation in 2004/05.

1 As opposed to mediation and preliminary inquiries, which include INCH and RAC.

6.3 Although many complaints are directed against the actions or attitude of individual officers, our main objective is to enhance the quality of public administration. Accordingly, recommendations from our investigations are generally rehabilitative and preventive rather than punitive in nature. Rarely do we propose disciplinary action against individual officers — this is a matter for the heads of the organisations. In short, we aim to improve rather than to disapprove, to comment constructively and not to carp critically.

6.4 If an investigation report is, in my opinion, not adequately acted upon by the head of the organisation concerned, The Ombudsman Ordinance provides that I may submit my report and recommendations together with any further observations to the Chief Executive. I may also make a further report to the Chief Executive if I consider a serious irregularity or injustice to have taken place. Within one month or such longer period as the Chief Executive may determine, a copy of such further report shall be laid before the Legislative Council.

The Government Minute on Implementation

6.5 Since 1995, the Administration has been submitting a Government Minute to the Legislative Council within three months after the tabling of The Ombudsman's Annual Report. This summarises the follow-up actions taken by the organisations concerned in implementing The Ombudsman's recommendations. It is a measure of the seriousness with which the Administration views the role and recommendations of The Ombudsman in promoting open and fair, responsive and responsible government.

Implementation of Recommendations

6.6 Properly conducted investigations and carefully considered recommendations are key to our work processes. An indicator of our achievement is the number of recommendations for improvement made by me and adopted for implementation by the organisations. In the 2004/05 reporting year, my Office completed full investigation of 125 cases and five direct investigations, with 198 and 72 recommendations respectively making a total of 270. 263 (or 97.4%) of them have been accepted by the organisations concerned; 6 (or 2.2%) are still under consideration. Each recommendation, when implemented, should result in improvement to public administration and better service to the community.

6.7 However, I am only too well aware that even the best-intentioned and most well-devised measures ultimately rest on the organisations concerned. Here, I refer to the determination of the leadership and the cooperation of the corporate whole.

6.8 This year, we concluded 1,873 cases after preliminary inquiries, including 209 cases by INCH and 1,664 by RAC, with a total of 181 suggestions for remedial actions or administrative improvement. We note that oftentimes organisations would conduct its own internal audit and even introduce improvement measures in the course of our investigation. In such cases, we act practically as a catalyst for change. We welcome and appreciate such "headstart" by the organisations. In this connection, we must pay tribute to complainants for bringing their cases forward, thus contributing to the improvement of public services.

Fig. 6.2

Number of Recommendations

Year*	From complaint investigation	From direct investigation	Total
2000/01	131	59	190
2001/02 (10 $^1/_2$ months)	166	70	236
2002/03	173	72	245
2003/04	121	88	209
2004/05	198	72	270

* *The period of the Reporting Year has changed since 2001/02 (see footnote to Table 1).*

Enhancement of Quality Administration

6.9 In implementing our recommendations and suggestions, the organisations concerned enhance public administration and improve services. The following are examples in a number of areas.

(1) Guidelines for clarity, consistency or efficiency in operation

Complainant had suffered financial loss as a result of a criminal act by an individual, who was subsequently successfully prosecuted. The court made a criminal bankruptcy order against the individual, with Complainant named as a creditor. The order, in written form, then had to be prepared by the prosecution or an interested party, for signing by the judge and then sealed. However, a year passed with no order being prepared by any party. Complainant was lost as to how to follow up the order.

Our inquiry noted that, although Complainant's solicitors could have prepared the order, the prosecution, viz the Department of Justice ("D of J"), should be best placed to do this. Yet, no procedure was laid down for this. On our suggestion to review procedures, D of J issued a Legal Circular requiring all prosecution counsel to prepare the order, subject to any other direction from the court. They should also give appropriate notification to creditors named in the order.

(2) Better arrangements for inter-departmental co-ordination

Complainant was greatly disturbed by the noise from festive activities late at night. He had complained to the Leisure and Cultural Services Department ("LCSD") and the Environmental Protection Department ("EPD") but, as the activities were for local traditions, the two departments only took advisory action. As a result, the nuisance remained unabated.

On our suggestion, LCSD established a joint task force with EPD, the Home Affairs Department and the Police. They worked out guidelines and action plans

with the festival organisers to ensure that the activities concluded by 11 p.m.

(3) Measures for better public enquiry/ complaint handling

Complainant had complained against a Government department to the General Office of the Chief Executive's Office ("GOCEO"). In an interim reply, GOCEO said it had referred the matter to the relevant bureau for direct reply but did not identify which bureau. On receiving no substantive reply after a long while, Complainant considered GOCEO had not taken his complaint seriously.

Our inquiry found that after receiving the complaint, GOCEO had indeed referred the case to the relevant bureau but, owing to some misunderstanding, the bureau failed to reply. For greater transparency and accountability, we suggested GOCEO to indicate the relevant bureau or department giving the substantive reply. GOCEO accepted this arrangement.

(4) Training for staff

Complainant was the defendant in a Labour Tribunal claim filed by her ex-employee. Allegedly, in the pre-hearing conciliation, the tribunal officer had proposed terms of settlement on her behalf but without her consent. As this involved professional judgment and not administration, we did not pursue. Still, we conveyed Complainant's dissatisfaction to the Judiciary Administrator ("JA") and suggested conciliation training for tribunal officers.

JA accepted our suggestion and arranged conciliation training for nine of their tribunal officers. Thereafter, JA deployed six of them specifically to handle conciliation and provided suitable briefing for them.

(5) Measures for better services

Complainant bid for a shop unit in the commercial complex of a public housing estate but was unsuccessful. He later found that the successful bidder did not rent the shop unit, which then remained vacant for about half a year. Thereafter, Complainant again bid for other shop units of the commercial complex and had similar experience.

Our "inquiry" elsewhere found the Housing Department ("HD") too tolerant of procrastinating tactics of successful bidders, including dishonoured cheques, and slow on re-tendering of shop units. On our recommendation, HD introduced new measures to counter such tactics: including accepting only cash or cashier orders rather than personal cheques, increasing the amount of non-refundable deposits, accepting the second highest bidder when the successful bidder failed to rent the shop unit, streamlining the procedures for re-tendering and reminding staff to enforce strictly the terms and conditions of the tender documents.

(6) Clearer information to the public

Complainant made an appointment, through the Immigration Department ("ImmD") website, for changing his Identity Card ("ID card") to smart ID card. However, when he went to the specified ImmD office (Kowloon Office) on due date, the staff there told him that such service was not available there and suggested he go to a designated office.

Our inquiry found that the relevant page of the ImmD website cited two types of

appointments: one for applying for new ID cards, re-issue of ID cards or changing personal data on the ID card; and the other for changing to smart ID cards. Complainant had mistakenly made an appointment for new ID card. To guide citizens better, ImmD accepted our suggestion to improve its website.

6.10 Apart from improving the quality of public administration, our work has also helped to safeguard human rights. Hong Kong abides by a number of international human rights treaties including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Like our counterparts overseas, this Office has an important duty to promote and protect human rights, particularly for the vulnerable such as inmates in institutions under the Correctional Services Department ("CSD").

6.11 We have received complaints from such inmates on a variety of issues alleging threat to safety, inadequate medical care, unfair treatment, frequency of visits, screening of incoming materials and personal comforts. Though some of the allegations may not be supported by concrete evidence, we are mindful of the fact that the inmates are kept in an enclosed environment without normal access to information and other resources. We, therefore, handle all such complaints with due care and compassion. This year, we completed a full investigation which resulted in recommendations to CSD for strengthening security measures to protect inmates from being attacked by peers.

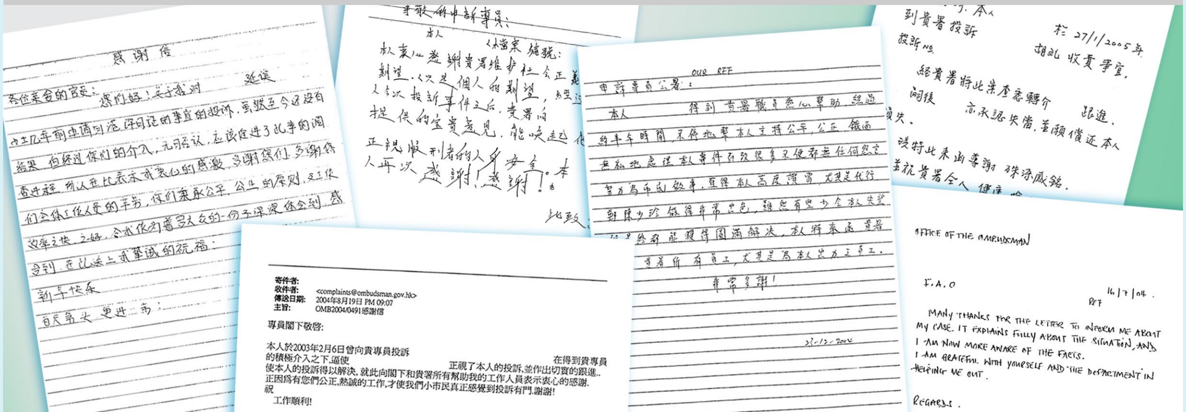
Comments on Our Services

6.12 From time to time, complainants address us with their comments about our findings or our procedures and practices. Invariably, we conduct internal audit, revising our operations where appropriate. We regard constructive comments on our services as reminders for review and reform.

6.13 Occasionally, we receive messages of appreciation from complainants and organisations, e.g. on the thoroughness and impartiality of our investigations (**Fig. 6.3**). We value such encouragement and we endeavour to further improve our services.

Fig. 6.3

Extracts from letters of appreciation


OFFICE OF THE OMBUDSMAN

F.A.O

16/7/04.

REF

MANY THANKS FOR THE LETTER TO INFORM ME ABOUT MY CASE. IT EXPLAINS FULLY ABOUT THE SITUATION, AND I AM NOW MORE AWARE OF THE FACTS. I AM GRATEFUL WITH YOURSELF AND THE DEPARTMENT IN HELPING ME OUT.

REGARDS.

Positive Complaint Culture

6.14 Unquestionably, complaints originate from grievance or dissatisfaction but this does not render complaints necessarily a negative product. A complaint made in good faith is due exercise of a citizen's rights. A valid complaint enables Government to re-visit policies, procedures and practices with The Ombudsman as referee. Complaints are opportunities to review and revamp, redress and reform. Public administration should evolve, develop and progress. Both the public and the Administration should realise, and appreciate, the positive value of criticism and complaints about deficiencies in the public service. The examples in para. 6.9 are but a few instances in illustration.

6.15 In our efforts to promote a positive complaint culture within both the Administration and our community at large, we have devoted much time and resources to activities for public awareness and education. These are described in **Chapter 7**.

7.1 Our role is to foster good governance by improving the standard of public administration. In this connection, it is essential to enhance understanding of our functions both in the community and within the public sector, to cultivate a positive service and complaints culture. We do so by sharing with them our investigation findings through media publicity and, for public officers, by an annual workshop as well as outreach talks.

7.2 At the international level, we take reference from Ombudsmen worldwide for refinement and further development of our own system. In return, we offer them our experience and share with them our practices.

Public Information

7.3 Our current publicity materials for TV and radio broadcast as well as those for display have been in use for years. We have reviewed and updated them this year. We have produced a new Announcement of Public Information ("API") on the theme that The Ombudsman helps to clear obstacles between the community and Government departments/public bodies for fair and open, committed and accountable service. The new API will be launched in the coming year to foster better community-wide awareness.

7.4 We have also updated our fact sheet, publicity leaflet and booklet on "Tips for Making a Proper Complaint". A new video has been produced to introduce our functions and powers. This is in three versions to meet the needs of different visitors: Cantonese, Putonghua and English.

7.5 Practically all our publicity materials including our Annual Reports and periodical *Ombuds News*, are posted on our website ***www.ombudsman.gov.hk*** for ready reference. The Ombudsman Ordinance is also in electronic format for public information. The website is updated regularly to keep pace with our development.

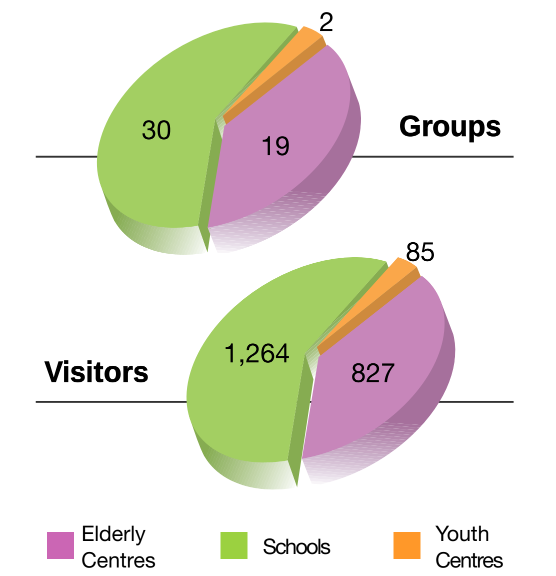
Resource Centre

7.6 Our Resource Centre offers a mini library, open to the public for access to Ombudsman-related publications, a full collection of our *Ombuds News*, video recordings and newsclips on our activities and annual reports of overseas Ombudsman offices. This year, we added 134 new publications to our stock.

7.7 At regular intervals, we invite groups from schools, youth and elderly centres to our Office as an experience in civic education. Such occasions normally comprise a visit to our Resource Centre, a briefing by our staff and an exchange of views. These sessions were attended by a total of 2,176 persons from 51 groups this year, compared to 2,033 and 42 respectively last year.

Fig. 7.1

Group Visits to Resource Centre



Media Relations

7.8 The Ombudsman Ordinance authorises The Ombudsman to publish investigation reports in the public interest. In this context, we organise press conferences every six to eight weeks to announce the results of our investigations into complaints or direct investigations. For complaint investigations, we select cases where the findings are relevant to a wide sector of our community. In all cases, we anonymise the complainants. To announce our press conference, we release our *Ombuds News*, which summarises our investigation findings. These newsletters are also available on our website.

7.9 This year, we announced the results of five direct investigations and two complaints investigated.

7.10 To maintain good working relationship for the promotion of quality public administration, The Ombudsman meets media members and receives interviews from time to time to share her experience with them.

Fig. 7.2



The Ombudsman at a Press Conference

Fig. 7.3

Press Conferences

20 May 2004	• Announcement of findings of direct investigation into 2003 priority arrangements for surplus teachers in aided primary schools
30 June 2004	• Publication of 16th Annual Report • Announcement of findings of direct investigation into enforcement of the Building Management Ordinance • Declaration of direct investigation into administration of urn grave cemeteries
26 August 2004	• Announcement of findings of direct investigation into enforcement action on unauthorised building works in New Territories exempted houses • Declaration of direct investigation into administration of the Mid-Levels administrative moratorium
4 November 2004	• Announcement of findings of direct investigation into administration of urn grave cemeteries • Declaration of direct investigation into administrative arrangements for market stall auction
16 December 2004	• Announcement of findings of direct investigation into bloodworm incidents in public swimming pools

20 January 2005	• Declaration of direct investigation into supervision of property services agents by the Housing Department • Announcement of two anonymised complaints – against six departments for failing to resolve the problem of laundry drying in public places – against the Official Receiver's Office for delay in following up a report of bankruptcy offence

Meeting with Legislative Councillors

7.11 We keep close contact with community leaders and organisations to enlist their support for our work. The Ombudsman meets with Members of the Legislative Council at least annually, normally in December, to update them on the initiatives of the Office. In view of a number of recent public issues falling outside The Ombudsman's purview, Members have urged for early review of The Ombudsman's jurisdiction. Their concern is over the restrictions imposed by The Ombudsman Ordinance. Such review is in hand (see **Chapter 2**).

Fig. 7.4



JPs visiting the Immigration Department

Support from Justices of the Peace

7.12 Since the launch of our Justices of the Peace ("JPs") Assistance Scheme in 1996, 381 JPs have given their support for promoting the Ombudsman system. As a regular activity, we arrange for the JPs orientation visits to Government departments/public bodies to familiarise them with their operations and management. During the year, they visited the Fire Services Department, Kowloon-Canton Railway Corporation West Rail and the Immigration Department. They appreciate those opportunities to sample and examine different facets of public administration.

Panels of Honorary Advisers

7.13 From time to time, we require expert assistance and professional advice for our investigations. Since 1994, The Ombudsman has appointed a panel of honorary advisers on a three-year term. They are specialists in their respective fields. The last term of appointment ended in December 2004. The advisers have responded warmly to The Ombudsman's invitation for service for a further term. The Ombudsman is grateful for their continued support.

7.14 A list of honorary advisers is at **Annex 13**.

The Ombudsman's Awards

7.15 The Ombudsman's Awards Scheme, launched in 1997, is meant to provide impetus for better public administration and quality services. They acknowledge Government departments, public bodies and public officers for their efforts in responding positively to complaints and eliminating administrative deficiencies through cooperation in our investigation.

7.16 Our presentation of The Ombudsman's Awards in August 2004 honoured 21 public officers from 18 organisations.

Fig. 7.5



The Ombudsman with winners of The Awards

Fig. 7.6

Winning Organisations for 2004

- Leisure and Cultural Services Department (Grand Award)
- Housing Department
- Social Welfare Department

Fig. 7.7

Individual Awards for 2004

Organisation	*Award*
Buildings Department	1
Civil Engineering and Development Department	1
Customs and Excise Department	1
Food and Environmental Hygiene Department	1
Hospital Authority	1
Housing Department	1
Immigration Department	2
Inland Revenue Department	2
Judiciary	1
Mandatory Provident Fund Schemes Authority	1
Marine Department	1
Hongkong Post	1
Social Welfare Department	1
Student Financial Assistance Agency	1
Television and Entertainment Licensing Authority	1
Transport Department	2
Urban Renewal Authority	1
Water Supplies Department	1

7.17 From time to time, questions have been raised why organisations criticised for deficiencies in administration could still be awarded. Our focus is in fact on improvement over past performance. The aim is to encourage them to continue to do better.

7.18 Government departments and public bodies with a large and broad-based clientele, extensive powers and services related to the public's daily necessities invariably are more exposed to complaint. If their staff are in uniform and have enforcement duties, they would be even more easily identified for criticism. However, they should not be disregarded where they make special efforts and work with a proactive attitude to improve systems, resolve complaints and generally provide quality services. We award them also in appreciation of their cooperation with our Office in investigation and in implementation of our recommendations.

Complaint Management Workshop

7.19 We organise a Complaint Management Workshop each year for public officers to enhance professionalism in complaint handling among Government departments and public bodies. It offers opportunities for participants to share experience and to raise their concern with us direct.

7.20 This year, instead of focusing on the general principles of complaint handling and service delivery, we commissioned the ADR Chambers (HK) Limited to design and run a one-day workshop on "Communication with Complainants" in March 2005. This workshop, comprising lectures, games and role-play, aimed to provide personal development training for participants familiar with or in charge of complaint handling. Given the interactive nature of the workshop, the number of participants had to be restricted to about 100 instead of the much larger number before. The Ombudsman personally considered each and every nomination from each organisation to ensure that maximum benefits would be derived.

7.21 After the event, participants highly rated the workshop. Most of them considered it to have enhanced their understanding on negotiation and mediation, thus strengthening their confidence for liaison with complainants. They reaffirmed their readiness to share the experience with their colleagues.

Fig. 7.8



Representative of ADR Chambers (HK) Limited explaining the role of negotiation in resolving disputes at the Complaint Management Workshop

Seminars for Target Groups

7.22 Apart from contact with the general public, we have targetted our liaison to specific groups in the community. As social workers and assistants of Legislative Councillors and District Councillors constitute a significant source of complaint referrals, we organised two seminars for them in October 2004 and January 2005. We aimed to enhance their understanding of our role, our jurisdiction and work procedures. The seminars were well attended by about 200 participants.

Fig. 7.9



Our colleagues sharing experiences on complaint handling with social workers at the seminar

Outreach Talks

7.23 More and more public officers are aware that complaint handling is an integral part of public service, indeed often a reminder for improvement. To meet their operational needs, we conduct talks and organise training sessions. This year, we delivered seven talks to Government departments and universities. Our senior officers introduced the functions of our Office, answered questions on our operations and shared experience with them.

Institutional Liaison

7.24 The Hong Kong Ombudsman is a member of the International Ombudsman Institute ("IOI") and a founding member of the Asian Ombudsman Association ("AOA"). In September 2004, The Ombudsman was re-elected as the Secretary of IOI. Currently, The Ombudsman is the Secretary of both organisations. The Ombudsman participates actively in their activities as institutional liaison is crucial to the professional development of an effective ombudsman system. I shall have the honour of hosting the 9th AOA Conference in Hong Kong in November 2005.

7.25 The duty visits and conferences that I attended in 2004 are listed in **Annex 15**.

Exchanges with the Mainland

7.26 We have developed an exchange programme with the China Supervision Institute since 1996, comprising visits in alternate years. In early November 2004, a ten-member delegation of the Institute visited Hong Kong for seven days. During the period, we arranged visits for them to Government departments and public bodies for first-hand contact with the local legal and administrative systems. We treasure these opportunities for enhancing mutual understanding. Next year, The Ombudsman will lead a small group on a reciprocal visit to the Mainland.

Fig. 7.10



The Ombudsman with delegates of the China Supervision Institute

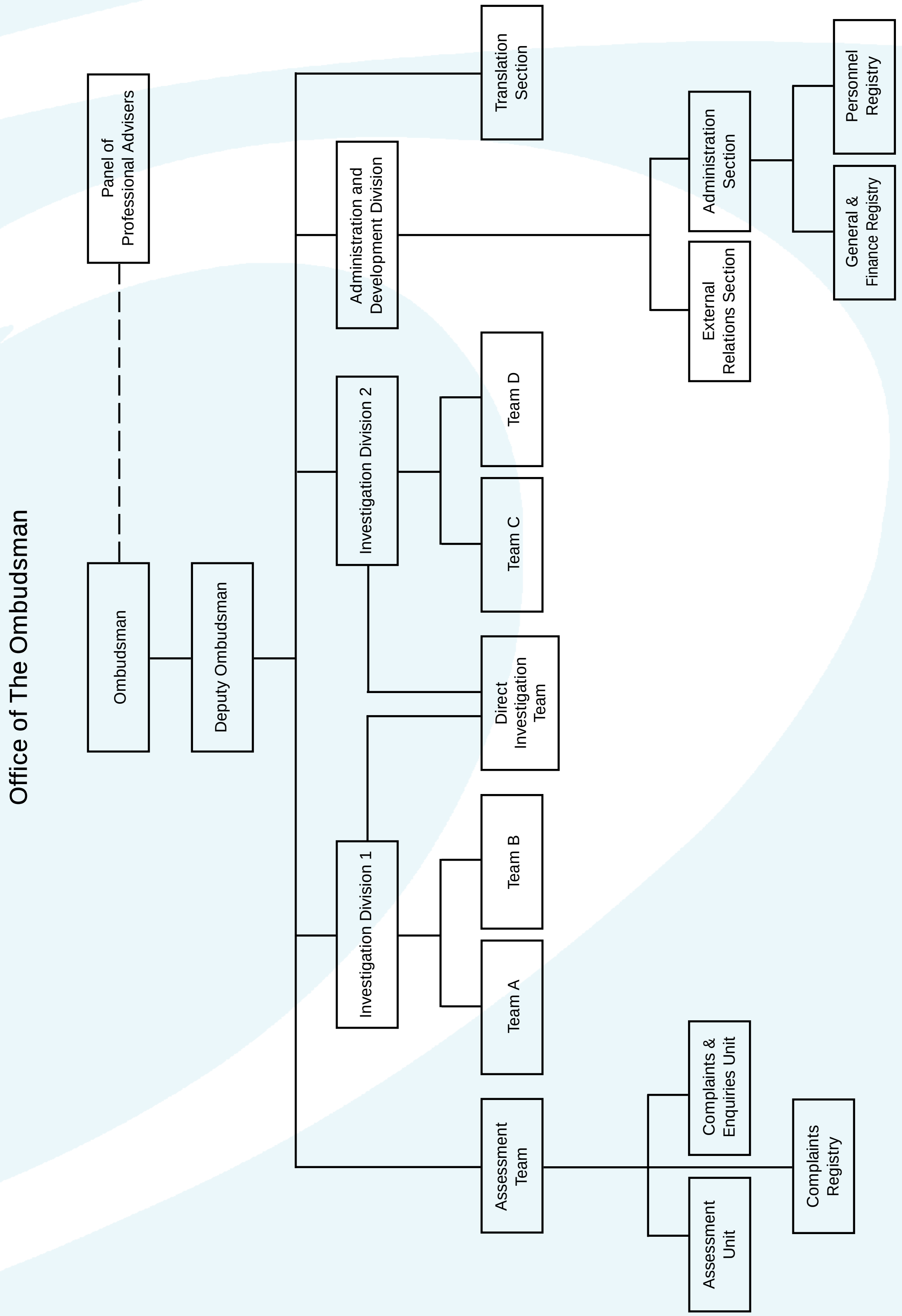
7.27 Often, groups from the Mainland come to us for understanding the ombudsman system and our jurisdiction. During the reporting period, we delivered talks to ten groups comprising 113 participants.

7.28 A list of these group visits to our Office is at **Annex 14**.

Opinion Survey

7.29 We conduct surveys from time to time to collect views from the public for review and improvement of our services. Last year, we reported that a thematic household survey had been completed through the Census and Statistics Department. The findings have helped tailor our community relations strategy. For example, the survey found the public less aware of my authority to initiate investigation even without complaints. We have since focused more on publicising our direct investigations. It is apparent that public awareness of our direct investigation function has thus been enhanced (see **Chapter 3**).

7.30 We value public comments, in particular, those from our clients. In April to June 2004, we launched an anonymised survey to gauge their expectations so as to refine our services and revise our procedures where appropriate. Out of the 827 clients approached, 260 responded, meaning a 31.5% response rate. Most respondents were generally satisfied with our service. However, we were able to distill from the findings aspects for improvement to our practices.



Office of The Ombudsman
Ombudsman
Panel of Professional Advisers
Deputy Ombudsman
Translation Section
Administration and Development Division
Administration Section
Personnel Registry
General & Finance Registry
External Relations Section
Investigation Division 2
Team D
Team C
Direct Investigation Team
Investigation Division 1
Team B
Team A
Assessment Team
Complaints & Enquiries Unit
Assessment Unit
Complaints Registry

Complaint

A complaint is a specific allegation against one or more organisations, or the staff, for any wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant either personally as an individual or collectively as a body corporate.

Direct Investigation

This refers to an investigation into matters of a systemic nature or wide community concern, initiated under section 7(1) of The Ombudsman Ordinance in the absence of a complaint.

Direct Investigation Assessment

This refers to the examination of an issue in the public interest or of community concern identified as a potential subject for direct investigation. Such assessment includes collection of background information, appraisal of the extent of public concern and consideration of any remedial action by the relevant authorities. This is sometimes dubbed "a mini direct investigation".

Discontinuation of Complaint

This refers to the cessation of inquiries into a complaint, under section 7(i) or section 11A of The Ombudsman Ordinance. This may be for the reasons set out in section 8 (read in conjunction with Schedule 2) or section 10 of the Ordinance identified after inquiries have commenced or such factors as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal information.

Enquiry

An enquiry is a request to this Office for information or advice. It is not a complaint.

Full Investigation

This refers to an investigation initiated under section 7(1) of The Ombudsman Ordinance upon receipt of a complaint.

Incapable of Determination

This refers to the situation where a case is inconclusive at the end of a full investigation. No conclusion can be drawn on the complaint because the evidence is conflicting, irreconcilable, incomplete or lacking in corroboration from independent witnesses.

Glossary of Terms

Internal Complaint Handling Programme (“INCH”)

This refers to a form of preliminary inquiries whereby a simple case is referred, with the consent of the complainant, to the organisation concerned for investigation and reply direct to the complainant, with a copy to The Ombudsman. In such cases, The Ombudsman may request the organisation to provide specific information in its reply, monitors the progress and scrutinises the reply, intervening where the reply is not satisfactory.

Investigation

This refers to an investigation under section 7(1) of The Ombudsman Ordinance. It may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in section 2 of The Ombudsman Ordinance. Basically, it means bad, inefficient or improper administration and includes: unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for an affected person.

Mediation

This refers to a voluntary process carried out under section 11B of The Ombudsman Ordinance where the complainant and the representative of the organisation concerned meet voluntarily to explore a mutually acceptable solution to a problem. Investigators from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where an action is not subject to investigation by The Ombudsman by reason of section 8 read with Schedule 2 to The Ombudsman Ordinance.

Partially Substantiated

This refers to the degree to which an action / inaction / decision under complaint is found, at the end of a full investigation, to be within the meaning of “maladministration” as defined in section 2 of The Ombudsman Ordinance. If maladministration is found in only one or some of the aspects, the complaint is partially substantiated.

Potential Complaint

This refers to a complaint addressed to an organisation and only copied to The Ombudsman. Such cases are regarded as not meant for action at all or not for the time being. However, The Ombudsman may intervene if the organisation concerned fails to follow up appropriately.

Preliminary Inquiries

These refer to inquiries conducted under section 11A of The Ombudsman Ordinance to determine whether a full investigation should be conducted.

Rendering Assistance/Clarification ("RAC")

This refers to a form of preliminary inquiries under which this Office collects from the organisation under complaint all facts that appear to be relevant. If the facts fully explain the matter under complaint, the findings and observations will be presented to the complainant, with suggestions to the organisation concerned on remedial action and improvement, where appropriate. If further inquiry is called for, a full investigation will be conducted.

Restrictions on Investigation

These refer to the restrictions on investigation set out in section 10 of The Ombudsman Ordinance.

Substantiated

This refers to the degree to which the action / inaction / decision under complaint is found, at the end of a full investigation, to be within the meaning of "maladministration" as defined in section 2 of The Ombudsman Ordinance. If all aspects taken together show that there is maladministration, the complaint is substantiated.

Substantiated other than Alleged

This refers to the situation where The Ombudsman finds a complainant's allegations to be unsubstantiated but in the course of investigation, discovers other aspects of significant maladministration. In such a case, The Ombudsman will criticise those other deficiencies, even in the absence of a specific complaint on those points, and conclude the case as substantiated other than alleged.

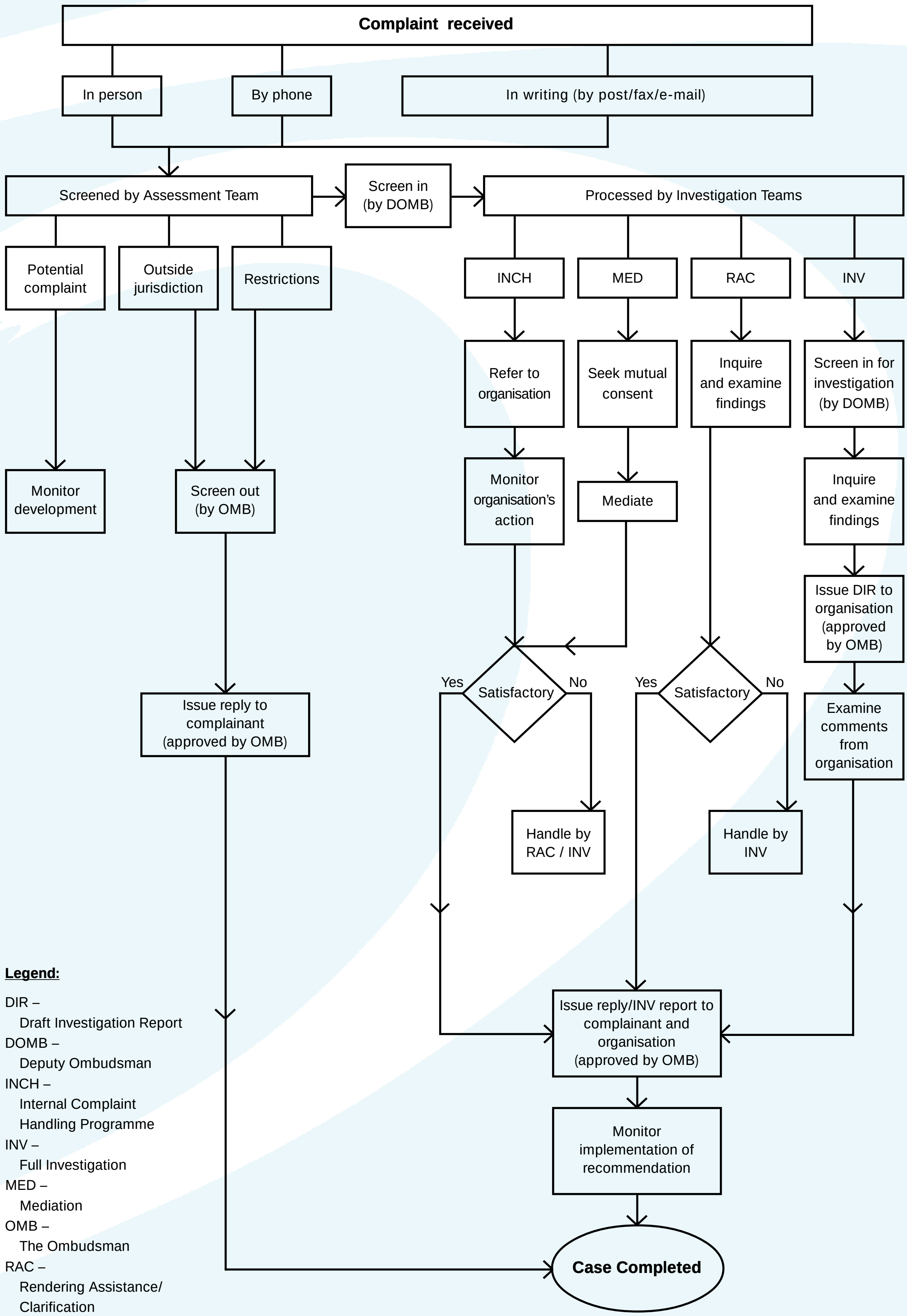
Unsubstantiated

This refers to the degree to which the action / inaction / decision under complaint is found, at the end of a full investigation, to be within the meaning of "maladministration" as defined in section 2 of The Ombudsman Ordinance. If no maladministration is found, the complaint is unsubstantiated.

Withdrawal of Complaint

This refers to a complainant voluntarily withdrawing a case. However, The Ombudsman may decide to continue the investigation if its nature or gravity should so warrant.

Annex 3 Flow Chart on Handling of a Complaint



Legend:

DIR – Draft Investigation Report
DOMB – Deputy Ombudsman
INCH – Internal Complaint Handling Programme
INV – Full Investigation
MED – Mediation
OMB – The Ombudsman
RAC – Rendering Assistance/ Clarification

Achievement of Performance Pledges (1 April 2004 to 31 March 2005)

(A) Enquiries

	Response Time		
By telephone or in person*	Immediate	Within 30 minutes	More than 30 minutes
	11,792 (100%)	0	0
In writing*	Within 5 working days	Within 6-10 working days	More than 10 working days
	39 (95.12%)	1 (2.44%)	1 (2.44%)

* Excluding enquiries on existing complaints

(B) Complaints

	Response Time		
Initial assessment / acknowledgement*	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	More than 10 working days
	2,905 (94.04%)	128 (4.15%)	56 (1.81%)

* Excluding potential complaints and cases outside jurisdiction or under restriction

	Cases outside jurisdiction or under restriction			Other cases		
Cases Concluded	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	More than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	More than 6 months
	682 (62.63%)	374 (34.34%)	33 (3.03%)	1,331 (43.29%)	1,652 (53.72%)	92 (2.99%)

(C) Group visits and talks

	Response Time	
Requests for guided group visits	Within 5 working days	More than 5 working days
	44 (100%)	0
Requests for outreach talks	Within 10 working days	More than 10 working days
	7 (100%)	0

Annex 5 Guidelines for Initiating Direct Investigations

Under section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman is empowered to initiate investigations of his own volition, even though no complaint on the matter has been received.

This power enables The Ombudsman to be more proactive in the approach to problems of wide public interest and concern. It is particularly useful to:

(a) follow through systemic problems which investigation of a complaint alone may not resolve;

(b) nip problems in the bud by addressing deficiencies in systems and procedures; and

(c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of complaints, but are believed or suspected to be the underlying reasons for complaint.

To facilitate consideration of matters for direct investigation, The Ombudsman has established some general guidelines:

(a) the matter concerns public administration and involve alleged or suspected maladministration as defined in The Ombudsman Ordinance;

(b) the matter should be of sufficient dimension and complexity, representing the general interest, desire or expectation of the community, or at least a sector in the community;

(c) individual grievances will normally not be a candidate for direct investigation, as there is no reason why the individual concerned cannot come lodge a complaint personally;

(d) a complaint will otherwise not be actionable under the restrictions in section 10(1) of The Ombudsman Ordinance, e.g. annoymous complainant, not the aggrieved person, but the matter is nevertheless of grave concern to The Ombudsman;

(e) the matter is normally not subject to the jurisdiction of the Court or a tribunal constituted under any Ordinance *or* it would not be reasonable to expect the affected person(s) to resort to the Court or any tribunal for remedy; and

(f) the time is opportune for a direct investigation, weighing against the consequences of not doing so.

These are no more than guidelines and are by no means exhaustive. Much will depend on the actual matter or problems.

Annex 6 List of Direct Investigations Completed

1994/95

1. Unauthorised building works

1995/96

2. Overcrowding relief in public housing
3. Accommodation for foreign domestic helpers
4. Unauthorised building works in New Territories exempted houses

1996/97

5. Provision of emergency vehicular access and fire services installations and equipment for public and private building developments
6. Problem of water main bursts
7. Co-ordination between the Social Welfare Department and the Housing Department in processing application for housing transfer on social grounds
8. Selected issues on general out-patient service in public clinics and hospitals
9. The Education Department failing to complete, on a timely basis, the processing of an application from a hearing impaired student to attend a special school

1997/98

10. Government telephone enquiry hotline services
11. Fisheries Development Loan Fund administered by the Agriculture and Fisheries Department
12. Arrangement for the closure of schools due to heavy persistent rain
13. Issue and sale of special stamps and philatelic products
14. Taxi licensing system
15. Co-ordination between the Drainage Services Department and the Environmental Protection Department over the protection of public beaches from being polluted by sewage discharges
16. Charging of management fees in Home Ownership Scheme Estates managed by the Housing Department

Annex 6 List of Direct Investigations Completed

1998/99

17. Dispensary service of the Department of Health
18. Handling of trade documents by the Trade Department
19. Recovery of public rental flats under the Home Ownership Scheme, the Private Sector Participation Scheme and the Home Purchase Loan Scheme by the Housing Department
20. Registration of tutorial schools
21. Commissioning and operation of New Airport at Chek Lap Kok
22. Restaurant licensing system
23. Issues pertaining to imported pharmaceutical products

1999/00

24. Registration and inspection of kindergartens
25. Provision and management of private medical and dental clinic services in public housing estates
26. Regulatory mechanism for the import/export, storage and transportation of used motor vehicles/cycles and related spare parts

2000/01

27. Regulatory mechanism for local travel agents for inbound tours
28. Selected issues concerning the provision of retraining courses by the Employees Retraining Board
29. Clearance of Provisional Urban Council tenants and licence holders affected by the Land Development Corporation's development projects
30. Selected issues concerning the management of government crematoria
31. Procedures for immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity

2001/02

32. Procedures for handling travellers suspected of using false or otherwise suspect travel documents
33. Management of construction projects by the Housing Authority and the Housing Department
34. Administration of public examinations
35. Mechanism for enforcing the prohibition of smoking in no smoking areas and public transport carriers

Annex 6 List of Direct Investigations Completed

2002/03

36. The Education Department's contingency and relief measures for the secondary school places allocation exercise 2001
37. Funding of sports programmes by the Hong Kong Sports Development Board
38. Administration of vehicle registration marks auctions
39. Mechanism for handling missing patients in hospitals of the Hospital Authority
40. Monitoring of charitable fund-raising activities
41. Role of the Home Affairs Department in facilitating the formation of owners' corporations

2003/04

42. Enforcement of the Education Ordinance on universal basic education
43. Operation of the Integrated Call Centre
44. Assistance provided by the Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings
45. Prevention of abuse of the Comprehensive Social Security Assistance Scheme
46. Handling of examination scripts under marking

2004/05

47. 2003 Priority arrangements for surplus teachers in aided primary schools
48. Enforcement of the Building Management Ordinance
49. Enforcement action on unauthorised building works in New Territories exempted houses
50. Administration of urn grave cemeteries
51. Bloodworm incidents in public swimming pools

EDUCATION AND MANPOWER BUREAU ("EMB")

2003 Arrangements for Surplus Teachers

Background

EMB's 2003 priority appointment ("the 2003 arrangements") to assist surplus primary school teachers had impacted on stakeholders in the education field. Aware of the immediate impact and the implications for secondary schools and eventually the tertiary sector, The Ombudsman initiated a direct investigation.

The 2003 Arrangements

2. The issue of surplus teachers have always existed when student enrolment dropped but used to be localised within certain schools. The then Education Department was able to place all surplus teachers each year until 2002, when some surplus teachers had to be seconded to certain schools as supply teachers.

3. In March 2003, EMB issued a circular memorandum to announce the 2003 arrangements. This required, *inter alia*, school sponsoring bodies to redeploy surplus teachers to fill vacancies in their schools. Furthermore, a "priority appointment" period up to early July 2003 was introduced, during which schools should offer appointments only to surplus teachers. For those who remained unemployed after the "priority appointment" period, EMB arranged for them to be appointed as "Special Supply Teachers" at reduced salaries.

Observations and Opinions

4. EMB's stated aim of the 2003 arrangements was to retain experienced and committed teachers in the profession. In reality, the 2003 arrangements practically retained the surplus teachers regardless of their performance. This adversely affected the employment of fresh graduates of teacher training institutions, hindered schools' selection of teachers, impaired Government's initiative on school-based management, deterred young people with good potential from taking up a teaching career and would eventually affect the interest of students. The appointment of "Special Supply Teachers" under the 2003 arrangements also cost an extra $9.68M in public funds.

5. We do not question the need for EMB to play a part in resolving the surplus teacher issue. Government has a duty to ensure that the transition does not unduly disrupt school operations, to balance the interests of all stakeholders, to facilitate the retention and recruitment of quality teachers and to guard against waste of public resources. However, EMB should not participate directly in "persuading" schools to take on only surplus teachers during the "priority appointment" period.

6. On the other hand, the teaching profession must equip itself, through re-training, refresher and injection of new blood, in order to face the changing requirements in education and maintain the professionalism of teachers. Appointment by seniority, rather than performance and professional excellence, would impact on the education for our young, standards of teachers and development of the profession.

7. Government and school sponsoring bodies, principals, the teaching profession, teacher training institutions and parents of students are all partners in the education of our young. Each party should critically re-examine the respective role and responsibilities for the development and preparation of young Hong Kong for the challenges in life and contribution to the community.

8. Our investigation showed up contradicting provisions in the Code of Aid for Primary Schools on whether School Management Committees can terminate a teacher's service.

Suggestions

9. The Ombudsman made the following suggestions to the Secretary for Education and Manpower:

(a) EMB to re-examine arrangements for surplus teachers.

(b) EMB to focus on matters at macro level.

(c) Schools to develop proper performance appraisal system with advice and guidance from EMB.

(d) Schools to practise school-based management properly.

(e) Schools and the teaching profession to anticipate and adapt to change.

(f) EMB to expedite review of Code of Aid.

(g) EMB to develop a realistic manpower plan for the school sector.

(h) EMB to review teacher training programme.

May 2004

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Administration of Urn Grave Cemeteries

Background

In the wake of a complaint to the Office and media reports that a man had been sweeping the empty urn grave of his wife for over ten years, The Ombudsman initiated a direct investigation into the management of urn grave cemeteries.

Administration of Urn Grave Cemeteries

2. FEHD took over the responsibility for administration of all urn graves on 1 January 2000. The lack of verification of the original records, flaws in data migration and undetected illegal burials and exhumations made the records unreliable. Consequently, FEHD had to check a vacated urn grave space physically to ensure its availability. A vacated space, therefore, normally took some three weeks to be allocated, while a new space could be allocated within one day.

3. Burial and exhumation without FEHD permission constituted a criminal offence. However, FEHD had no established procedures to prevent, deter or detect breach of the law. The number of undetected illegal burials and exhumations was unknown.

Observations and Opinions

4. The size of the cemeteries and the massive number of urn graves made their administration difficult. However, this was no excuse for lack of vigilance.

5. The lack of complete and accurate records of all urn graves had contributed to inefficient and ineffective administration of urn grave cemeteries. FEHD admitted that short of a full survey, the number of undetected illegal burials and exhumations could not be ascertained. This Office considered a full survey necessary and affordable at an estimated cost of $2.3 million vs a total revenue of $14.5 million in three years.

6. Current measures against illegal burial and exhumation were piecemeal and ineffective. Prosecution had never been contemplated. Follow-up action on detected cases had been slow and dilatory. This was unsatisfactory and unacceptable. FEHD's attitude verged on being casual and callous.

7. It is time-honoured Chinese culture to respect our ancestors. It is sad that this seems to be breaking down by neglect due to emigration, lack of descendants or their indifference. Government has a social responsibility to facilitate, encourage and sustain this culture of care and respect.

Recommendations

8. The Ombudsman made the following recommendations to the Director of Food and Environmental Hygiene:

General

Staff Attitude

(a) Instil among all staff concerned, including those in the frontline, due determination and a sense of duty to rectify irregularities.

Full Survey

(b) Conduct a full survey to verify the information of each and every existing urn grave, identify areas with long-standing urn graves for tighter security measures and identify dangerous slopes for preventive and remedial works.

(c) Transfer the data of the full survey to a computer database and fully test it to generate accurate, verified records.

(d) When the new, fully tested database becomes ready, abolish the old computer databases and manual records.

Long-term Measures

(e) Consider alternative means for monitoring and random checks of high-risk areas to deter and detect illegal activities.

(f) Review and, where appropriate, update the statutory requirements.

Administration of Urn Grave Cemeteries

Urn Grave Records

(g) While the three sets of database are still in use, require staff concerned to maintain them properly and keep them accurate and up-to-date.

Urn Grave Space Allocation

(h) Review the process for allocating vacated urn grave spaces, to shorten the processing time.

(i) When the new, fully tested database becomes ready, review the need for site visits before allocating vacated urn grave spaces to expedite processing.

Burials and Exhumations

(j) Review the follow-up action on approved burials and exhumations, e.g. consider setting up signposts for vacated spaces.

(k) Through such means as messages on website and leaflets for applicants, inform descendants of the importance that they be present at the burial or exhumation.

Illegal Burials and Exhumations

(l) Publicise the possibility of prosecution and the penalty for illegal activities within cemeteries.

(m) Be firm with offenders, step up prosecution and introduce administrative sanctions such as maintaining a list of unscrupulous contractors for closer surveillance.

(n) Patrol cemeteries for random checks to detect suspicious graves and deter illegal activities.

(o) Prescribe a performance pledge for following up detected cases of irregularity.

(p) Draw up concrete plans to follow up the five cases already detected.

(q) Keep appropriate records of long-standing urn graves and alert staff for closer monitoring.

Urn Grave Maintenance

(r) Through FEHD website and leaflets, educate descendants on their responsibility towards their deceased ancestors.

(s) Enlisting the assistance of departments concerned, arrange preventive and remedial works for dangerous slopes.

(t) In case of landslips, inform all descendants of the damaged graves, according to the verified records.

9. FEHD had accepted our recommendations.

November 2004

HOME AFFAIRS DEPARTMENT ("HAD")

Enforcement of the Building Management Ordinance

Background

In view of considerable community concern, The Ombudsman conducted a direct investigation into the adequacy and effectiveness of the enforcement of the Building Management Ordinance ("BMO"), Cap. 344 by the Home Affairs Bureau ("HAB") and the Home Affairs Department ("HAD").

Building Management Ordinance

2. The BMO defines the duties and powers of Owners' Corporations ("OCs") and Management Committees ("MCs") with regard to the management and maintenance of common parts of a building, preparation of budgets and accounts and keeping of financial and meeting records. It also confers on owners the rights to monitor the operations of their OC/MC, which include the rights to inspect and obtain a copy of OC budgets and accounts, and to require the MC chairman to convene a general meeting of the OC for specified purposes at the request of not less than 5% of the owners.

3. The Secretary for Home Affairs ("SHA") is the Authority for the BMO, empowered under section 40A to inspect common parts of a building, attend general meetings of OCs, and inspect and obtain a copy of OC budgets, accounts, documents and records. He may order the MC of a building to appoint a building management agent for a building, institute prosecution for offences under the BMO and apply to the Lands Tribunal for an order to dissolve an MC and appoint an administrator.

Enforcement Records

4. However, since the enactment of the BMO, SHA has:

(a) never instituted prosecution;

(b) never invoked his powers; and

(c) never applied to the Lands Tribunal for a court order.

5. Between August 2000 and July 2003, HAB/HAD received from the public six requests for prosecution and eight requests for invoking SHA's powers. All requests were turned down.

Observations and Opinions

Inspections

6. HAD staff visit private buildings at least once a year, for an understanding of the general condition of the building and the functioning of the OC/MC but not for enforcement purposes. Since HAB/HAD have an enforcement/execution role under the BMO, HAD staff should look out for non-compliance during site visits and meetings. HAD's existing building management booklet for OCs/MCs and owners fails to offer ready reference on the key requirements of the BMO.

Prosecutions

7. All requests for prosecution from the public were screened by relatively junior HAB/HAD staff without proper delegation of authority from SHA. There was also no regular reporting to SHA on the handling of the requests. Furthermore, there were serious delays in processing and replying to some of the requests.

8. HAB/HAD have made no attempt to prosecute even blatant cases. They adopt an attitude of indefinite, or even infinite, latitude towards offenders and interpret the factors affecting recommendation for prosecution in such a way as to justify inaction. Consistent non-enforcement can only breed disregard for enforcement and disrespect for the law.

9. HAD's guidelines on prosecution are inadequate in that they do not spell out clearly when SHA's powers of inspection under the BMO should be invoked for investigating an alleged breach and the role of the Department of Justice ("D of J").

Invocation of SHA's Powers

10. In deciding whether SHA's powers of inspection under section 40A should be invoked, HAD would consider if there is *prima facie* evidence of breach of the BMO or of serious management problems in the building. Documents and information obtained under this section are for SHA's use only, not to be divulged to owners. However, these considerations and constraints are not clearly spelt out in HAD's guidelines. It is also not clear how HAD determines the degree or extent of management problems which would warrant the exercise of SHA's powers under that section. Furthermore, there are no guidelines for invoking SHA's powers under other sections of the BMO.

Complaints and Disputes

11. HAD staff are under instruction to advise or informally mediate in disputes, but not to arbitrate or take a policing role. If HAD's advice is not taken or mediation fails, HAD would advise the affected party to consider gathering the support of not less than 5% of the owners to request the MC chairman to convene a general meeting of the OC or bringing the case to the Lands Tribunal for adjudication. There are, however, inherent drawbacks and limitations in these statutory avenues (see paragraphs 15 and 17).

12. HAD's efforts to promote corporate governance of OCs and to reinforce training for MC members have helped to reduce building management complaints and disputes. HAD should keep up these good efforts.

Mediation

13. Compared with statutory avenues, there are obvious advantages in mediation. It can resolve a dispute more speedily, at lower cost and without damage to the relationship of the parties involved. The process is confidential, with simple and flexible rules and procedures. However, mediation also has limitations. Participation is entirely voluntary. Parties with a history of adversarial relations or prior litigation are unlikely to agree to mediate.

14. Since mid-2002, HAD has been providing a free mediation service under a pilot scheme with the assistance of two professional mediation bodies. However, the pilot scheme has not been thoroughly tested. The limit of 3 $^{1}/_{2}$ hours set for mediating each case is barely adequate for simple and straightforward cases. HAD does not have a comprehensive plan for administering the scheme, nor dedicated pamphlets to publicise it.

Convening a General Meeting

15. It may be difficult to obtain the consent of 5% of owners required to convene a general meeting of the OC. Forming a quorum for the meeting is even more difficult. MC chairmen may refuse to convene such meetings, and there is no penalty for so refusing. Reluctant MC chairmen may also employ various tactics to delay or frustrate legitimate requests for such meetings.

16. Such malpractices are not uncommon. Unfortunately, HAD is unable to help the owners or provide relevant statistics to us. To protect owners' interests, SHA should be empowered to order an MC to convene a general meeting of the OC if owners' legitimate request for such a meeting is unreasonably refused or frustrated.

Adjudication by Lands Tribunal

17. Adjudication by the Lands Tribunal can be costly and time-consuming as legal formalities apply. The range of solutions is limited. Neighbourly relationship is prone to damage under a "win-lose" situation. Worse, the losing party may appeal to a higher court, causing even greater burden on cost, time and energy.

18. For these reasons, owners are often reluctant to bring their case to the Lands Tribunal. There are calls for simplifying the mechanism for adjudicating building management disputes. Two suggestions have been considered by HAD for some time, *viz*. a Building Management Tribunal and a Wise Men Panel.

Recommendations

19. The Ombudsman makes the following recommendations to HAB and HAD:

Enforcement

(a) To look out proactively for non-compliance and draw up clearer guidelines and procedures for checks and follow-up action.

(b) To promote among OCs/MCs and owners better understanding of the BMO by producing a separate guide or revise the existing one.

(c) To review and revise HAB's/HAD's interpretation of the factors affecting recommendation for prosecution and to take prosecution actions against blatant offenders accordingly.

(d) To make reference in the guidelines to SHA's powers of inspection under the BMO and D of J's role in prosecution.

(e) To spell out clearly in the guidelines the important considerations and constraints for invoking section 40A.

Systems and Procedures

(f) To make proper delegation of authority for processing requests for enforcement and to devise systems for regular reporting to SHA.

(g) To introduce administrative measures, including pledges for issue of replies, into the guidelines to ensure proper and timely handling of requests for enforcement.

(h) To draw up specific instructions on the handling of complaints of non-compliance and take steps to ensure timely processing of such complaints and proper keeping and analysis of relevant statistics and data.

Mediation

(i) To extend the pilot mediation scheme and to improve its operations so as to properly try out public acceptance and effectiveness of mediation in resolving building management disputes.

Statutory Avenues

(j) To amend the BMO to enable the Authority to order an MC to convene a general meeting of the OC for specified purposes.

(k) To expedite discussion and consultation with parties concerned and develop an early proposal for a simple and effective mechanism for adjudicating building management disputes.

20. HAB/HAD have undertaken to consider our recommendations carefully and work out how best to implement them.

Epilogue

21. This rounds off our three direct investigations on Government's services and actions in building management:

(a) Role of HAD in facilitating formation of OCs (published in March 2003);

(b) Assistance by HAD to owners and OCs in managing and maintaining their buildings (published in November 2003); and

(c) Enforcement of the BMO (published in June 2004).

June 2004

HOUSING, PLANNING AND LANDS BUREAU ("HPLB"), BUILDINGS DEPARTMENT ("BD"), LANDS DEPARTMENT ("Lands D") AND HOME AFFAIRS DEPARTMENT ("HAD")

Enforcement Action on UBWs in NTEHs

Background

The Buildings Ordinance ("BO") prescribes that all building works require prior approval of BD as the Building Authority. However, in the New Territories, under Government's Small House Policy applicable to indigenous villagers, the construction of village-type houses within specified limits of height and size can be exempted from part of the BO. Lands D is the approving authority for these New Territories exempted houses ("NTEHs").

2. Unauthorised building works ("UBWs") are building works that have not been approved by BD or Lands D, as appropriate. Common examples are rooftop structures, canopies, enclosed balconies and, the most serious, entire buildings without approval. UBWs in NTEHs are a long existing problem.

3. In 1996, The Ombudsman initiated a direct investigation and made recommendations to the authorities concerned for more effective enforcement. However, the situation had deteriorated rather than improved in recent years. The Ombudsman, therefore, decided in November 2003 to conduct a second direct investigation, to examine the factors for the continued proliferation of UBWs in NTEHs and the appropriateness and effectiveness of the enforcement measures taken by Lands D and BD.

Magnitude of Problem

4. Owing to resource constraints, neither department had given high priority to tackling UBWs in NTEHs. In 2003, Lands D considered the problem to be serious in five out of the nine NT districts: some districts would require over 50 years to complete action on existing UBW cases.

Authority and Organisation

5. BD's Special Action Unit took action against UBWs under construction, i.e. works-in-progress ("WIP") cases, through contracted services. It issued removal orders to offenders and prosecuted owners for non-compliance. The lease enforcement teams of Lands D's District Lands Offices ("DLOs") took lease enforcement action on UBWs in NTEHs. Such action included written warnings, registration of warnings against property titles, demolition of UBWs and re-entry of land and cancellation of land lease.

Enforcement Strategy

6. In 2001, HPLB set up an internal working group to map out a strategy to contain UBW cases. Under the strategy, BD would take priority action on WIP cases, while Lands D action on blatant breach and tolerate minor breach cases. Lands D would deal with all other cases as part of DLOs' lease enforcement programmes.

Rates Exemption for Indigenous Villagers

7. HAD has the authority to grant rates exemption to indigenous villagers subject to their meeting certain criteria, one of which requires a house to be free of UBWs. This could deter the growth of UBWs.

Observations and Opinions

8. From the investigation, this Office had the following observations:

(a) NTEHs were part and parcel of Government's Small House Policy, established long ago. We considered this aspect of the policy should be reviewed in the light of the modernisation of the NT.

(b) Prolonged inadequate enforcement had engendered among owners and offenders disregard for regulation and disrespect for the authorities. With Lands D enforcement action often not carried through, its credibility was called into question.

(c) The 2001 working group's focus of action on WIPs and blatant breach was a step in the right direction. However, the strategy did not address the fundamental issues of resource constraints and the limitations of enforcement measures.

(d) Limitations in each of Lands D's lease enforcement measures resulted in little effect in containing the problem.

(e) Staff shortage would continue to be a problem for lease enforcement.

(f) Inconsistent practices among DLOs could lead to accusations of unfair treatment from owners.

(g) Lands D headquarters had a responsibility to guide and advise front-line staff in coping with the difficulties encountered in their lease enforcement work. However, it had not done much in this respect.

(h) Differences in opinion between Lands D and BD over what constituted WIP cases had deterred them from taking a coordinated approach on enforcement and given the public an impression that they tended to pass the buck.

(i) Ineffective enforcement action had reinforced owners' and villagers' perception about DLOs' toleration of UBWs and hence given rise to complaints and objections against lease enforcement teams in action.

Conclusion and Recommendations

9. We acknowledged that it would not be possible to eliminate the widespread problem in the foreseeable future. Strategies and measures should, therefore, aim for effective containment of the problem. The Ombudsman made 18 recommendations to HPLB, Lands D, BD and HAD:

Overall Directions

(a) To review the current enforcement strategy and develop a realistic enforcement policy for containment of UBWs in NTEHs.

(b) To explore the feasibility of rationalisation of existing UBWs that are safe, not serious and thus tolerable, subject to payment of a penalty fee.

(c) To assess and monitor the situation regarding UBWs in NTEHs through the regular use of aerial photographs.

Enforcement

(d) To review the inefficiencies identified in this investigation for developing improvement measures and to set targets for achievement.

(e) To step up action against non-compliance with removal orders for WIP cases.

(f) To explore the feasibility of extending the current WIP operations to cover new UBWs.

(g) To monitor lease enforcement action closely to ensure due completion and to suspend action only on good grounds.

(h) To develop an action plan against owners of UBWs not purged and against recurrent breach.

(i) To develop a plan for tackling unauthorised four or five-storey houses.

(j) To standardise lease enforcement practices among DLOs as far as possible, given local differences.

Cooperation and Coordination

(k) To reconcile any differences between Lands D and BD over WIP operations.

(l) To set up a joint team to tackle WIPs and new UBWs.

Optimisation of Resources

(m) To train and guide front-line staff to instil greater confidence in them.

(n) To simplify work processes and streamline procedures, to redeploy staff and optimise the use of limited resources.

Publicity

(o) To publicise widely Government's revised strategy for public awareness.

(p) To enlist Heung Yee Kuk's assistance in explaining and disseminating Government's stand on UBWs to villagers.

(q) To alert potential NTEH buyers to the risk of UBWs by widely publicising Lands D's pamphlet on the purchase of village houses.

Monitoring of Rates Exempted Houses

(r) To work out a system under which Lands D conducts matching checks on ownership of detected UBWs to see if any owner is enjoying rates exemption and to report such cases to HAD for action.

Final Remarks

10. HPLB, Lands D, BD and HAD generally accepted the above conclusion and recommendations.

August 2004

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD") AND FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Bloodworm Incidents in Public Swimming Pools

Background

Upon the discovery of bloodworms in public swimming pools in August 2004, there was intense media interest in allegations of LCSD covering-up and destroying evidence. Reports of inconsistent views between LCSD and FEHD in the media also cast doubt over the coordination between the departments. Against this background, the Acting Ombudsman initiated a direct investigation into the incidents.

LCSD Handling of the Incidents

2. In August and early September, bloodworms were found in nine public swimming pools. The Director of LCSD convened a Working Group with FEHD, Department of Health ("DH"), Electrical and Mechanical Services Department and Water Supplies Department to look into the bloodworm incidents. It also enlisted the help of a microbiologist. A biologist later offered to assist.

3. With the discovery of bloodworms in Kowloon Park Swimming Pool, DH advised LCSD that their presence indicated unsatisfactory water quality. Bloodworms were then found in a waterslide in Tai Wan Shan Swimming Pool and also in Kwun Tong Swimming Pool. LCSD sought Police assistance to investigate into the possibility of the incidents being caused by human factor. Media interest intensified. On 27 August, FEHD sent a report to LCSD advising that bloodworms could survive in the pool water of Kowloon Park and that the waterslide at Tai Wan Shan could provide a favourable breeding ground. It also reported larvae, pupal cases and adults in the samples collected from Tai Wan Shan. In a Working Group meeting on 28 August to discuss the FEHD report, divergent views were expressed. A further meeting on 31 August was to consider the FEHD report again.

4. On 30 August, TV news reported that the design of the waterslide at Tai Wan Shan had resulted in breeding of bloodworms and that the Police investigation had found the full life cycle of bloodworms in the samples. In response, LCSD issued a press statement close to midnight and a spokesman next morning told the media that bloodworms, but not pupae or eggs, had been found in the samples examined by FEHD. His statements were contradicted that very evening by another TV news report that FEHD had reported finding pupae. LCSD then realised that the incidents had turned into a credibility issue.

5. There was extensive media coverage on 1 September of the LCSD "cover-up". That morning, bloodworms were found in Hammer Hill Road Swimming Pool. Whilst the LCSD staff were busy cleaning up the dirt, Police received a report in the afternoon from some individual about the discovery. On 2 September, media reported prominently allegations of LCSD destroying evidence.

Further Development

6. The Working Group met again on 6 September and concluded that there was insufficient evidence of bloodworms breeding or developing in normal pool water, but they could breed in some special installations where circulation of water was slow. Police investigation also found no evidence of human factor for the incidents.

Observations and Conclusions

7. We found LCSD to have lacked impartiality in its own investigation into the incidents. It had been selective in the reception of expert views. However, we found no evidence of LCSD "covering-up" or destroying evidence. The bloodworm incidents became an administrative and public relations fiasco due to the following LCSD factors:

(a) insufficient focus on possibility of natural occurrence in environment of public swimming pools;

(b) absence of an open mind in handling experts' divergent views expressed in Working Group meetings;

(c) gap in communication among LCSD directorate;

(d) undue haste to respond to the media while the Working Group had not yet arrived at any definitive conclusion;

(e) inexperience of the officer concerned in meeting the media and disclosing information to the public;

(f) insufficient transparency in releasing information and failure to give a balanced picture of its investigation into the incidents; and

(g) LCSD headquarters gave no guidance to its staff on preserving integrity of a suspected crime scene and assisting in Police inquiry.

8. In contrast, the other departments concerned had done their part in providing prompt assistance and positive support to LCSD. FEHD, in particular, had provided LCSD with frank and professional advice.

9. On hygienic condition, we found that LCSD had clear requirements for public hygiene and established practices for water quality assurance. However, there was insufficient time for proper cleansing around or inside the pools, play equipment and artificial features. There were even complaints of faecal discharge by swimmers in public pools. All these pointed to the need for greater vigilance and more vigorous enforcement by LCSD. It was also an indictment on inconsiderate users who ignored public hygiene.

Recommendations

10. This Office noted that LCSD had subsequently carried out remedial measures, including a steering committee chaired by its Director, to raise the hygienic condition of public pools. Against this background, The Ombudsman made the following recommendations:

Hygiene of Public Swimming Pools

(a) Increase the sampling frequency for testing of pool water.

(b) Continue with the half-day closure of swimming pools.

(c) Review the schedule and specifications for cleansing operations, taking into account the design of pools and ancillary features.

(d) Review frequency and requirement for cleansing of pools and surrounding areas.

(e) Put in place a programme of follow-up inspections to ensure that cleansing work has been carried out satisfactorily.

(f) From time to time, seek FEHD's support in detecting and preventing possible breeding of insects on site.

(g) Provide training to frontline staff to strengthen their knowledge in public hygiene, pest control and sampling techniques.

(h) Review the current booking arrangements to avoid over-booking of swimming lanes during session breaks.

(i) Review and, if necessary, revise the design of pools under planning.

(j) Confer with DH on whether the hygiene standard at public swimming pools should be raised.

Internal and External Communication

(k) Enhance two-way communication between LCSD headquarters and frontline staff for a better understanding of the rationale and priorities in the management of swimming pools.

(l) Review the approach and mechanism within LCSD on deciding lines of response for release of information to the public to ensure accuracy and transparency.

(m) Provide media and crisis management training to LCSD senior managerial and directorate staff to enhance their ability to handle media relations and crisis situations.

Public Education

(n) Publicity and public education programmes on swimmer etiquette and the need for proper hygiene in the use of public swimming pools.

Final Remarks

11. LCSD had accepted all our recommendations and already implemented some of them.

December 2004

BUILDINGS DEPARTMENT ("BD")

Case No. OMB/DI/125

Enforcement of Demolition Orders

Background

Some statutory demolition orders issued by BD had not been complied with for decades. This defeated the purpose of serving the orders, bred disregard for the Department and put the law in disrepute. The Ombudsman, therefore, conducted this direct investigation assessment.

Unauthorised Building Works

2. Under section 14 of the Buildings Ordinance, Cap. 123, certain types of building works carried out without approval were unauthorised building works ("UBW") subject to enforcement.

Demolition Orders

3. Demolition orders were issued to owners who refused to heed BD advice to remove their UBW voluntarily. Where an order was not complied with, BD would either initiate prosecution or engage a contractor to remove the UBW at the owner's expense to clear the "outstanding" order.

Outstanding Orders

4. As at 31 December 2003, there were 56,972 outstanding orders, 671 of which had been issued in 1990 or before.

Clearance of Backlog

5. In July 2000, the then Director of BD set up a dedicated team to clear long outstanding orders. In mid-2002, a comprehensive electronic database was established, which facilitated effective monitoring of outstanding orders. In mid-2003, the Director set up a Progress Monitoring Committee to oversee progress of all outstanding cases and give directions on difficult ones. With additional resources for 2004/05, BD set new targets to speed up the clearance of outstanding orders. The targets and actual progress were updated monthly on BD's webpage.

Observations and Opinions

6. BD had hitherto been grossly dilatory in clearing some outstanding orders. However, in 2000, it was determined to rectify the situation with a revised policy and new measures. The number of outstanding orders has reduced significantly since the beginning of 2004. BD has undertaken to continue its positive efforts. Accordingly, The Ombudsman did not initiate a direct investigation on the matter.

CIVIL SERVICE BUREAU ("CSB"), ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT ("E&MSD"), HOME AFFAIRS DEPARTMENT ("HAD") AND OFFICE OF THE TELECOMMUNICATIONS AUTHORITY ("OFTA")

Case No. OMB/DI/124

The Use of Bilingual Information Materials

Official Languages Policy

It is Government policy that materials meant for the general public should be bilingual and that only under exceptional circumstances, with strong operational or financial considerations, should monolingual materials be issued.

2. CSB regularly reminded departments and public organisations of the need to ensure that all written materials meant for public consumption were in both English and Chinese.

Implementation

3. It came to our notice that certain materials issued by E&MSD, HAD and OFTA were in Chinese only. The departments explained that such monolingual materials were of a supplementary nature, or there was a time gap in printing the two versions, or the target readers were mainly Chinese.

Observations and Opinions

4. We considered none of the excuses to be within the exceptions of strong operational or financial considerations, particularly when the materials carried no indication whatsoever in English even on the subject or some reference to a source where information in English could be obtained. Furthermore, we must not assume that all target readers in a multi-racial society like Hong Kong could understand the local language.

5. We suggested that, even in the exceptional circumstances, monolingual materials should provide in the other language:

(a) the subject or a bilingual caption; and

(b) a brief message directing the recipient to a source where further information in that language could be obtained.

6. The departments agreed that there was room for improvement in their arrangements and that in future they would adhere more closely to the bilingual requirements in issuing materials. They had accepted and implemented our suggestion.

7. In addition, CSB with responsibility for Official Languages would meet regularly with departmental secretaries and monitor implementation of the Government policy on languages.

HOUSING DEPARTMENT ("HD")

Case No. OMB/DI/113

Repair of External Wall Cladding at Housing Estate

Background

Glass mosaic tiles had been found falling off the external walls of a Home Ownership Scheme estate completed in 1995. In July 1999, HD appointed a building surveyor to conduct a comprehensive survey of the external walls. This revealed in May 2000 that about 5% of the total area of the external walls had debonded tiles and the remaining 95% of the tiles were in potential danger of debonding. The surveyor recommended that all existing tiles and cement render backing be replaced.

2. HD acknowledged its obligation to replace the debonded 5% of the tiles but questioned the surveyor's assessment on the remaining 95%. The Department proposed to the owners of the estate three options for remedy:

(a) "patch repairs" of the debonded tiles;

(b) complete removal of all tiles and replacement by acrylic paint; and

(c) "systematic repairs" to the external walls, i.e. "patch repairs" of the debonded tiles and "mechanical pinning" of the entire tiled surface.

3. The Mutual Aid Committees of the estate rejected option (b) outright and instead asked for complete replacement of all tiles. HD indicated in May 2001 that due to the lack of support from the owners for option (c), it could only adopt option (a). Nevertheless, it continued to try seeking their support for option (c) through demonstration of "mechanical pinning" work and an opinion survey. HD believed that "mechanical pinning" of the entire tiled surface constituted "improvement works", which required unanimous consent from the owners under the Deed of Mutual Covenant of the estate.

4. In October 2003, HD appointed another building surveyor to survey the walls to determine the extent of debonding. This indicated in early 2004 that about 5% of the tiles had debonded and had to be replaced. In June 2004, HD commenced tendering for option (a) above - a lapse of three years since the options were mooted.

Observations and Opinions

5. The disagreement between HD and the building surveyor over the need to replace all the tiles and the question of whether "mechanical pinning" constituted "improvement works", thus requiring unanimous consent from the owners, were issues of professional judgement, rather than administrative matters subject to investigation by this Office. Our focus was, therefore, whether HD could have repaired the wall cladding much earlier.

6. We noted that HD preferred option (c) as it would improve the stability of the entire tiled surface. It had tried its best to sell that option to the owners, but it should have known that its chance of success in securing unanimous consent from the owners to any of the options was very low. By making an early decision to pursue option (a), which would discharge its obligation, HD could have avoided a delay of two to three years.

7. We also noted that HD had appointed as its representative to respond to our inquiry an officer deeply involved in the repair project. This raised questions of conflict of interest.

Conclusion and Recommendations

8. HD should remind staff to take great care in analysing the Department's position before commencing any negotiation with stakeholders. In the event of a stalemate, they should be prepared to come to firm decisions instead of continuing futile attempts.

9. HD should also be more judicious in selecting independent and impartial officers capable of representing the Department's views to reply to our inquiries.

10. Nevertheless, there was no systemic fault in this case. The Ombudsman, therefore, considered further investigation unnecessary.

HOUSING, PLANNING AND LANDS BUREAU ("HPLB"), HOUSING DEPARTMENT ("HD") AND LANDS DEPARTMENT ("Lands D")

Case No. OMB/DI/120

Administration of Squatter Control

Background

HD has been responsible for squatter control, whereas Lands D is the authority for overall land control. Demarcation of responsibility for control of unauthorised structures had become a matter of interpreting technical terms. Complaints indicated a lack of coordination between the two departments.

2. In 2000, the Administration decided that Lands D should take over squatter control. The two departments agreed to effect the transfer in two phases. The squatter control offices of Kowloon, Hong Kong and Islands were transferred in Phase I on 1 April 2002. However, Phase II involving the transfer of the New Territories offices had yet to take place by February 2004. The Ombudsman, therefore, initiated this direct investigation assessment.

Phase II Transfer

3. The problem of surplus staff was the stumbling block. Through redeployment, HD had reduced the number from 643 to just over 300. However, that was still too many. Conflicting views of the staff unions exacerbated the situation. HPLB started to intervene and coordinate in April 2003.

Observations and Opinions

4. The transfer was a sensible scheme for more cost-effective use of resources and efficient coordination in land and squatter control. This Office considered that Phase II should proceed as planned. As HPLB had intervened, The Ombudsman decided not to take further action.

5. The surplus staff problem called for a flexible approach. In our direct investigation on unauthorised building works ("UBW") in New Territories Exempted Houses published in August 2004 (Ref: OMB/DI/112), we noted that Lands D's staff shortage had handicapped its enforcement against UBWs. Deployment of HD's surplus staff to Lands D should help towards containing the UBW problem, particularly as HD squatter control staff should be well conversant with demolition work.

6. We recommend that HPLB consider expediting the Phase II transfer with staff redeployment. This Office would monitor progress.

INLAND REVENUE DEPARTMENT ("IRD")

Case No. OMB/DI/121

Information Provided in Tax Assessments for Individuals

Background

Individual taxpayers declare their income together with claims for deductions and allowances in *Tax Return – Individuals* ("tax return") for the relevant tax year. Each tax return is accompanied by *a Guide to Tax Return – Individuals* and an Appendix. The former explains how to complete the tax return and the latter shows the types and rates of allowances and deductions that may be claimed, along with the rate of tax on each band of net chargeable income.

2. After determining the amount of salaries tax, property tax and/or profits tax payable, IRD issues a separate *Assessment and Demand for Tax* ("tax demand notice"). The design of the tax demand notices for salaries tax is complicated, featuring a combination of boxes and blank spaces for IRD to print the relevant amounts of income, deductions/allowances and tax payable. On the reverse page of the tax demand notice is a box for the Assessor's Notes to explain any adjustments made to the declared income, allowances and/or deductions.

3. Whilst many taxpayers may accept the amount of tax demanded without attempting to understand how it is calculated, some taxpayers have complained that not enough information was provided to show how their tax had been calculated.

Observations and Opinions

4. Although tax returns and tax demand notices are generally comprehensible and provide individual taxpayers with adequate information, this Office considers that there is room for improvement:

(a) some of the Assessor's Notes contain jargon, ambiguity or unexplained statutory references not easily understood by individual taxpayers; and

(b) tax rates change from year to year and vary for different types of tax. To assist understanding, tax demand notices should contain a breakdown of how the amount of tax has been computed.

Recommendations

5. To ensure the adequacy and comprehensibility of information provided to individual taxpayers, IRD has accepted all our recommendations as follows:

Content of Assessor's Notes

(a) To ask a panel of lay members to study and explain what they understand from each of the Notes. If their interpretation is at variance with the meaning intended by IRD, this would indicate that the Note is not clear and should be recast.

Explanation of Tax Computation

(b) Tax demand notices for salaries tax and personal assessment should be redesigned to an "accounting-type" format to show clearly how the deductions are made and the net taxable income is calculated.

(c) All the figures are to be printed in boxes and unused boxes struck out, instead of a combination of boxes and blank spaces.

(d) A tabular form should be used to show how the total amount of tax payable has been computed.

6. IRD has set up a working committee to review the Assessor's Notes, design of tax demand notices and other commonly used forms. The new tax demand notices are expected to be put to use in July 2005.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB/DI/122

Action against Burning of Candle Wax at Mid-Autumn Festival

The Mid-Autumn Festival ("the Festival") is a major festival when large crowds gather in public places to celebrate, often with candles. However, from time to time there were media reports of injuries caused by the melting or burning of candle wax for fun.

2. LCSD was responsible for public safety and cleanliness in public pleasure grounds. Prior to and during the Festival, LCSD would publicise extensively to advise the public to keep the environment clean and not to melt or burn wax. During the festive period, its staff would patrol to monitor leisure venues. LCSD had issued operational guidelines to staff.

3. LCSD deployed about 1,000 staff members each day during the Festival to patrol various leisure venues. They were responsible for maintaining order, giving verbal warning to visitors not to burn wax or to litter and taking action against wax burning, illegal hawking, littering or defacing Government property.

4. Members of the public had become more conscious of the danger of wax burning and the need to keep the environment clean. There had been visible improvement in the cleanliness of the leisure venues after the festive period and decline in the number of injuries caused by wax burning.

5. As administrative arrangements had been put in place against wax burning activities, The Ombudsman did not initiate a direct investigation.

Cases Concluded under Internal Complaint Handling Programme

AIRPORT AUTHORITY ("AA")

Case No. OMB 2004/3408

AA – airport management – failing to stop touting activities by taxi drivers at the airport terminal

The complainant was approached by a man at the arrival hall of the airport terminal offering discounted taxi fares. He rejected the offer but the man continued to follow and harass him. He considered AA to have failed in its duty to stop touting activities.

2. AA apologised to the complainant. It had conducted such measures as daily anti-touting operations. It had also been discussing with the Transport Department, the Police and representatives of some 40 taxi associations about tightening control. Joint operations with the Police had resulted in the interception of many touting activities.

3. The Authority also launched publicity campaigns regularly, including announcement through the public address system and distribution of leaflets, to advise airport users against accepting illegal services provided by touts.

4. The tout in this case had been arrested and sentenced to one month's imprisonment, the maximum term under the Airport Authority Bylaw. Meanwhile, AA was studying the possibility of raising the penalty for further deterrent.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2004/3063

FEHD – complaint handling – failing to properly handle repeated complaints about water dripping from an air-conditioner above the complainant's flat

The complainant allegedly had telephoned FEHD a number of times to complain about water dripping from an air-conditioner of a flat upstairs. However, she did not receive any response and the Department did not contact her for follow-up. The problem persisted for more than a year as a result.

2. FEHD records showed that the complainant had called the Department several times in June and July 2003 regarding the problem. FEHD had promptly sent staff to conduct an inspection each time. Although they did not see water dripping, they still advised the owners of the flats upstairs to ensure proper maintenance of their air-conditioners and the rubber hoses, to avoid nuisance caused by water dripping. No sign of water dripping was detected in subsequent inspections from August to November and the complainant indicated that the situation was satisfactory.

3. In July 2004, the complainant complained again about the same problem. FEHD staff conducted a site inspection and found only the air-conditioner of the flat immediately above connected to a drip tray and a rubber hose to collect water droplets into a bucket. Later, the complainant made the same complaints but still FEHD staff found no water dripping when they went over to investigate. The complainant agreed to call the Department at once when she saw water dripping from the air conditioner.

4. In early September, FEHD staff went to the complainant's flat 15 minutes after receiving her call but still did not find any water dripping from the air conditioner upstairs. Nevertheless, as it was still connected to a drip tray and a rubber hose, the staff advised the owner to make improvement.

5. Against the background above, FEHD had actually followed up on the complaints. It was just that no water was found dripping despite repeated inspections. Nevertheless, its staff only informed the complainant's mother of the result after each inspection but did not reply to the complainant. They undertook to contact the complainant herself in future.

6. On the other hand, we noticed that FEHD staff only jotted down "morning" or "afternoon" as the time of inspection in the records. At our suggestions, the Department issued new guidelines to remind staff to record the exact time and all details of visits for easier follow-up.

LANDS DEPARTMENT ("Lands D")

Case No. OMB 2004/4374

Lands D – assignment of banner site – allowing a District Councillor to assign a designated roadside spot to another party for displaying a publicity banner

The complainant alleged that a District Lands Office under Lands D had allowed a District Councillor to assign a designated roadside spot to another party for displaying a publicity banner. Moreover, the officer answering her complaint had failed to be impartial and to clearly identify himself as a public officer.

2. On referral by this Office, Lands D reviewed the case against its Implementation Guidelines and confirmed that such assignment had contravened the Guidelines. On the Department's advice, the party concerned removed the banner. As regards the officer's misinterpretation of the Guidelines and failure to clearly identify himself, the Department had cautioned him and issued an apology to the complainant.

REGISTRATION AND ELECTORAL OFFICE ("REO")

Case No. OMB 2004/3619

REO – voting procedures – unreasonable refusal by staff at a polling station to accept the complainant's driving licence as proof of his identity

On 12 September 2004, the complainant went to cast his vote in the Legislative Council Election. He presented his driving licence but staff at the polling station allegedly refused to issue a ballot paper as his driving licence carried no photograph and could not prove his identity.

2. The REO "Guide on Voting" (the "Guide") sent to voters stated that a voter must bring along his/her "Hong Kong Identity Card ("HKID") or other identity document when visiting the polling station in person". However, it did not mention that such "other document" must carry a photograph of the bearer. The complainant, therefore, considered the action of the staff concerned inappropriate.

3. REO explained that in general only a document with a photograph of the bearer can be regarded as proof of identity. Staff at polling stations could identify from a HKID with a photograph whether or not the bearer was indeed the voter. However, this was not the case with a driving licence without a photograph of its bearer. The decision not to issue a ballot paper to the complainant was, therefore, appropriate.

4. Nevertheless, REO undertook to revise the Guide to read "a voter must bring along his/her HKID or other identity document bearing a photograph of the voter when visiting the polling station in person". It also apologised in writing to the complainant for the inconvenience caused.

Cases Concluded under Rendering Assistance/Clarification

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT ("AFCD") AND EFFICIENCY UNIT ("EU")

Case Nos. OMB 2004/0169; OMB 2004/1608

AFCD – processing of licence application – delay over the complainant's application for Animal Trading Licence

EU – handling of enquiry – providing wrong information on the status of the application

The complainant applied to AFCD for an Animal Trading Licence in mid-October 2003 to sell birds in his pet products shop. He alleged that despite three site inspections, the Department had still not issued the licence by the end of December. When he telephoned the AFCD hotline to enquire

about progress, the staff first replied that the licence had been approved, but later that his application was still being processed. The licence was eventually issued to him in January 2004.

2. The complainant alleged that there had been delay on the part of AFCD in processing his application and that its staff had given him wrong information.

3. AFCD explained that as the shop was located inside a commercial building, assessment procedures for the application were different from ordinary cases. Besides site inspections to ensure that the shop facilities met the standard requirements, the Department had to check whether the shop would contravene any rules or regulations of that commercial building and to consider any additional clauses for inclusion in issuing the licence. Consequently, it took longer to process the complainant's application.

4. This Office considered AFCD to have been proactive in processing the complainant's application. To prevent avian flu and to protect public health, the Department was justifiably cautious in processing the licence application. It was a prudent and reasonable move.

5. The AFCD hotline was actually answered by staff of the Integrated Call Centre of EU under the Government Secretariat. EU admitted that the staff answering the complainant's call had misread the e-mail message from the Department in response to the enquiry and mistaken the licence to have been issued. As she discovered her mistake 20 minutes later and called the complainant at once, this should not affect his application. EU had instructed the staff concerned to handle enquiries carefully.

6. AFCD and EU had apologised to the complainant and undertook to improve their communications.

DEPARTMENT OF HEALTH ("DH")

Case No. OMB 2004/1402

DH – dental treatment – (a) providing pulp treatment to the complainant's daughter without her prior consent; (b) failing to check if her daughter was allergic to medication before treatment; and (c) allowing an unqualified dental therapist to perform the operation on her daughter

The complainant's daughter joined the School Dental Care Service ("SDCS") offered by DH and had a check-up at its dental clinic. The dental therapist, on detecting decay in three of her upper teeth requiring fillings, performed oral hygiene instruction, tooth brushing under supervision and filling of the decayed teeth. When the decay was removed, the teeth were found to require pulpotomy. The first stage of pulpotomy was then performed by a senior dental therapist.

2. DH records showed that the complainant had been informed of the scope of the service and composition of its professional team when her daughter enrolled in the scheme. Pulp treatment was within the scope of basic dental treatment. By signing the Application and Consent Form for School Dental Care Service, the complainant had consented to dental treatment considered necessary for her daughter. However, she did not indicate that her daughter was allergic to any medication. The pulpotomy was performed by a qualified professional with proper authorisation. DH had also informed the complainant of the dental treatment performed via her daughter's SDCS handbook and the "post pulp treatment care" instruction card.

3. This Office considered that DH had followed established procedures. Nevertheless, relying simply on the parents' blanket consent, given at the beginning of the school year, to all basic dental treatment may not be satisfactory. To protect young patients' rights, The Ombudsman suggested that DH inform parents beforehand of any irreversible treatment to be performed on their children and that parents provide their children's latest health condition when deliberating and deciding on any treatment. DH agreed to enhance public education and publicity and strengthen communication with parents on this.

FIRE SERVICES DEPARTMENT ("FSD")

Case No. OMB 2004/2670

FSD – complaint handling – (a) not taking the initiative to inform the complainant of its follow-up action; (b) providing inaccurate information in its reply; and (c) failing to respond properly to the complainant's telephone enquiries

The complainant, representing a property management company, alleged that the main door of a flat in a private building had been replaced with a wooden board, constituting a fire hazard. The complainant had telephoned to report to FSD in early January 2004, but the Department had not taken the initiative to inform him of its follow-up action, or conducted inspections conscientiously. FSD indicated in its reply of 1 June that inspections had been carried out. Nevertheless, the complainant indicated that there were discrepancies between its inspection report and the actual situation. He was also dissatisfied that an officer of FSD's Building Improvement and Support Division ("Building Division") had not properly handled his company's telephone enquiries.

Complaint (a)

2. FSD classified the case as a "fire hazard" after a site inspection in early January and sent an advisory letter to the flat owner, followed by a "Fire Hazard Abatement Notice" in early April requiring him to remove the hazard in 30 days. On 11 May, the Building Division found that a solid wooden door had been installed, thus abating the fire hazard.

3. FSD staff had twice replied to the telephone enquiries from another staff member ("Ms A") of the property management company in late January and early April. As subsequent action would involve legal procedures and the privacy of a third party, details were not divulged to the complainant in accordance with usual practice.

4. This Office considered that FSD had followed departmental guidelines in handling the complaint. In its letter of 1 June 2004, it had also explained to the complainant the reasons for not providing details of its action. However, the Department agreed that the officer concerned was perfunctory and too passive in responding to telephone enquiries. It had, therefore, given him appropriate instructions.

Complaint (b)

5. An FSD officer had conducted an inspection on 19 February. As he could not contact the flat owner immediately, he wrote his inspection report on 24 February and noted that as the inspection date. FSD had given him proper instruction to prevent recurrence.

6. Furthermore, the complainant alleged that the flat owner had not installed a solid wooden door by 12 May. FSD had checked its records and confirmed that the door had been installed on 30 April. Nonetheless, workers had removed it several times between 11 and 27 May to facilitate renovation of the flat.

Complaint (c)

7. Ms A had called the FSD hotline in late January and complained against an officer of the Building Division for failing to refer her enquiry to the subject officer and to reply to her before the end of the day as promised. The Acting Station Officer had immediately explained and apologised to her and thought that her dissatisfaction had been addressed. FSD had instructed its staff to handle complaints more carefully.

8. FSD had set up a working group after the incident to review the procedures, guidelines and staff training relating to the handling of public enquiries. New guidelines had since been drawn up.

HIGHWAYS DEPARTMENT ("Hy D"), HOME AFFAIRS DEPARTMENT ("HAD"), LANDS DEPARTMENT ("Lands D"), PLANNING DEPARTMENT ("Plan D"), TRANSPORT DEPARTMENT ("TD") AND ENVIRONMENTAL PROTECTION DEPARTMENT ("EPD")

Case Nos. OMB 2004/1682 - 1687; OMB 2004/1706 - 1717;
OMB 2004/1724 - 1729; OMB 2004/1742 - 1747;
OMB 2004/1754 - 1759; and others

Hy D, HAD, Lands D, Plan D, TD and EPD – land use – failing to consult local residents before changing the land use of a site and causing them nuisance

Some residents of a private housing estate ("Estate A") complained against the above departments for failing to consult local residents before using a site nearby ("Site B") as a truck loading/unloading area and depot for an infrastructural development project ("the Project") elsewhere, which caused them nuisance.

Actions by the Departments

2. Precast segments for a flyover under the Project were to be delivered from the Mainland to Hong Kong by barge. Hy D, therefore, needed a barging point to receive them before transportation to the works area. Prior to designating Site B as the barging point and depot, the Department had, through HAD's District Office ("DO"), consulted the District Council ("DC"), local organisations and neighbouring housing estates. It had accommodated some of their demands by retaining the existing activities on site and reducing the area of the depot. It had also responded to each of the four written submissions from residents and the Customer Service Centre of Estate A.

3. As regards transportation of the segments, Hy D, after consulting the DC Traffic and Transport Committee ("TTC") and the residents, initially arranged to deliver them first to an intermediate site, then to the works site at night via Street C where Estate A was situated. As residents in the vicinity of Street C were still concerned about the impact of such arrangement, Hy D decided to deliver the segments by sea and other roads instead. A trial run proved to be smooth, witnessed by members of a monitoring group under TTC and residents' representatives. The route was, therefore, adopted and any impact on the residents eliminated.

4. DO had consulted DC and residents several times in different ways regarding these arrangements and conveyed the views to the departments concerned. DO staff had in fact sought the views of the residents of Estate A both before (through the estate sales office) and after they moved in.

5. Lands D was responsible for approving land use applications. Upon receipt of Hy D's application for using Site B as a barging point and depot for three and a half years, Lands D consulted HAD, Plan D, TD and EPD. It met with them, residents and District Councillors. Taking into account the views received, Lands D cut the period of use by one year and reduced the site area so that the existing activities could continue.

6. Plan D did not object to Hy D's application, since under its policy, short-term use for less than five years need not conform to the land use designated by the Outline Zoning Plan.

7. TD had no objection to Hy D's application because Street C had sufficient spare capacity for the delivery vehicles. Moreover, Hy D had reserved enough space for parking and cargo handling and had designated vehicular access points so as to minimise the impact on neighbouring roads. In fact, the delivery of segments by land had never adversely affected the traffic flow on Street C.

8. EPD had issued an environmental permit for the Project to Hy D with conditions including restrictions on the time of operation, the equipment to be used and the arrangements for storage. As the works conformed to the requirements of the technical memorandum issued under the Environmental Impact Assessment Ordinance, EPD believed that these measures were enough to contain the impact on the environment. Subsequently, on Hy D application, EPD issued an amended permit to enable the retention of the existing activities on site.

Observations and Opinions

9. This Office considered that the six departments had followed their policies and procedures in handling the change of land use of Site B. Local residents had been duly consulted and their views largely accepted as illustrated by the reduction of the site area and the period of use as well as the change of the route for delivery. As a result, the residents of Estate A and others along Street C were no longer affected by the traffic.

HOME AFFAIRS DEPARTMENT (“HAD”)

Case No. OMB 2004/2666

HAD – financial assistance to mutual aid committee – refusing to reimburse the expenses of a mutual aid committee

A mutual aid committee (“MAC”) complained that the notes to the “Application for Financial Assistance by Mutual Aid Committee” were misleading and that HAD had unreasonably rejected its application for quarterly reimbursement of expenses.

2. Having set up its office in October 2003, the MAC claimed reimbursement of expenses amounting to $1,999.60 from HAD in January 2004. This was reimbursed in full in mid-February. Nevertheless, its application for reimbursement of expenses in January to March made in April 2004 was rejected.

3. HAD explained that its financial assistance to a MAC was up to $1,000 per quarter. In the case of setting up a new office, a MAC may claim reimbursement up to $2,000 for two quarters at the same time. As the complainant had been given such financial assistance for two quarters in February, no further reimbursement could be made for expenses of the quarter January to March.

4. HAD admitted that the notes to the application form were not clear and had accordingly revised the wording. It had also apologised to the complainant.

HONGKONG POST ("HK Post")

Case No. OMB 2003/4173

HK Post – payment service – failing to keep proper record of payment received and to respond to the complainant's enquiries

The complainant claimed that he had received a ticket for violation of traffic regulations and paid the fine at a post office the next day. However, he later received a Notice Demanding Payment of Fixed Penalty from the Police, saying that the fine had not been settled. He enquired with the Central Traffic Prosecutions Bureau of the Police and the post office concerned. As he had lost his receipt, both departments indicated that they could not follow up his enquiries and he had to pay the fine once more. Aggrieved, he lodged a complaint with this Office.

2. Investigation by HK Post found that the complainant's vehicle had actually been issued with two tickets for illegal parking at different times at the same location on the same day. HK Post explained that post office staff handling payments would input relevant data of a bill such as the serial number, the amount billed, the payment date, the receiving post office and the actual amount received into the PayThruPost computer system. However, the system did not record the vehicle registration mark. In this light, as the complainant was not able to produce the receipt, HK Post could not follow up further.

3. Meanwhile, the Central Traffic Prosecutions Bureau indicated that if an offender had settled the fixed penalty, it would not have issued a demand note. As the complainant was served with two fixed penalty notices, he had to pay twice.

HOSPITAL AUTHORITY ("HA")

Case No. OMB 2004/1401

HA – medical prescription – directing the orthopaedists at a public hospital not to prescribe certain medication while other specialists were allowed to do so

When the complainant had a follow-up consultation at an HA hospital, the orthopaedist told him that a certain drug might help his condition but the hospital did not have the supply. The complainant later learned from the hospital's pharmacy that the drug was available but orthopaedists could not prescribe it while other specialists could. He considered that the orthopaedist had cheated him. He also complained that the hospital's reply did not provide the contact telephone number of the signing officer.

2. HA explained that the orthopaedists at that hospital were no longer prescribing the drug because it had no specific medical efficacy. The Authority indicated that it was a clinical decision made by the

orthopaedics department of the hospital, not an administrative directive. Nevertheless, the hospital apologised to the complainant for any misunderstanding caused.

3. HA further stated that the complainant could contact the signing officer by calling the main switchboard at the hospital. The hospital undertook to provide the telephone number of the Patient Relations Officer in all future correspondence with patients for easy contact.

4. This Office would not comment on the orthopaedics department's decision not to prescribe the drug because it was purely a clinical judgement and not an administrative matter. Nevertheless, we believed that the orthopaedist had not cheated the complainant.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2003/4209

HD – recladding of external walls – (a) failure to reclad the external walls of a building with tiles of a similar colour, thereby affecting its appearance; and (b) delay in handling the complainant's enquiries

HD had reclad the external walls of a building in a public housing estate with tiles of a different colour, giving the excuse that tiles of the original colour were out of stock. The complainant complained to HD by e-mail about this and other estate management issues. He was not satisfied with the Department's preliminary reply and failure to follow up on his second enquiry.

Complaint (a)

2. HD explained that as it had trusted its contractor to exercise "professional judgement" and choose tiles of a "similar" colour, it did not specify the colour of the tiles in the contract. HD held that the tiles chosen by the contractor complied with the specifications and looked "similar" to the original colour of the building. HD considered it acceptable for the contractor to launch the works as soon as possible, for fear of seepage and structural damage to the building, rather than taking more time to source tiles of the original colour.

3. We noted that HD had indeed not specified the colour of the tiles. While we appreciated the need to complete the works as soon as possible, the appearance of the building should not be sacrificed.

4. This Office considered that HD had relied too much on the "professional judgement" of the contractor. HD should learn from the incident and take the initiative to restore the walls with appropriate tiles or explore other possible remedies with the residents.

Complaint (b)

5. HD received the complainant's first e-mail enquiry in late November 2003 and e-mailed him in acknowledgement the next day. Meanwhile, his enquiry was referred to the property management company for action. The company replied in early December. As the complainant considered his questions not fully answered, he sent another e-mail to HD asking for more details. The Department sent him an acknowledgement the next day and a substantive reply on 29 December.

6. As HD had complied with its performance pledge by replying all within 21 days, this Office considered that there had been no delay.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/0095

HD – maintenance service – failing to monitor a shopping centre management company properly, thus causing delay in repairs

The complainant claimed that she had fallen from the staircase of a shopping centre in a housing estate. She attributed the accident to a damaged escalator having been out of service for several months so that she had to use the staircase instead. She had asked the management company to repair the escalator as soon as possible. However, it ignored her request. She, therefore, lodged a complaint against HD for failing to monitor the management company properly, resulting in delay in repairs.

2. According to HD, after the escalator was damaged in an accident, the single operator of the shopping centre and the management company notified the maintenance contractor for repairs. However, the contractor did not follow up, so the single operator issued a reminder to the contractor. Meanwhile, notices were posted near the escalator explaining the suspension of service and suggesting use of the lift adjacent to the shopping centre.

3. HD further explained that the escalator had remained out of service for more than two months because the maintenance contractor had failed to place orders for the spare parts early and the single operator and management company had not followed up the case closely. In this connection, HD had instructed the management company to follow up any future maintenance works actively to ensure quick restoration of services.

4. HD's appraisal report on the management company showed that the Department had recorded the company's dereliction of duty for future contract consideration. However, we considered that the single operator should also be penalised. Furthermore, as HD had been well aware of the prolonged disruption of escalator service, it should have taken the initiative and urged the management company to expedite repairs.

IMMIGRATION DEPARTMENT (“Imm D”) AND LEGAL AID DEPARTMENT (“LAD”)

Case Nos. OMB 2004/2347 - 2348

Imm D – marriage registration application – failing to provide reasons in writing for refusal to process the complainant’s application for marriage registration

LAD – legal aid application – failing to take the initiative to understand Marriage Registry’s reasons for refusal

The complainant married a Thai national in Thailand in 1991 and then returned to settle in Hong Kong. In 2002, he obtained a Certificate of Registration of Divorce (“the Certificate”) from the Thai Consulate General in Hong Kong certifying that he had divorced his wife.

2. In January 2004, the complainant applied at a Marriage Registry (“the Registry”) of Imm D to marry again. However, the Registry rejected the Certificate as a valid proof of his divorce and refused to process his application. The complainant was advised to apply to the court for a divorce decree first.

3. In early February 2004, the complainant applied to LAD for legal aid for his divorce petition but was refused because the Certificate was documentary proof of his divorce. LAD considered it unnecessary for him to get a divorce decree.

4. In June 2004, the complainant applied for marriage registration with the Registry again but was refused for the same reason. He again applied for legal aid for divorce petition but LAD asked him to obtain from the Registry in writing its reasons for refusing to process his application for marriage registration.

5. The complainant then telephoned the Registry for assistance. Imm D staff asked to speak to the responsible LAD lawyer direct but LAD staff refused to do so. The Registry, therefore, refused to give the reasons in writing as they could not ascertain what information was required by LAD.

6. The complainant considered both the Registry and LAD to be shirking their responsibility. He felt “caught in the middle” by them, each holding a different interpretation of the law.

7. On the basis of legal advice from the Department of Justice, Imm D considered that a divorce registered at the Thai Consulate General in Hong Kong could not be regarded as valid. The complainant was required to apply to the court in Thailand or in Hong Kong to obtain a divorce decree before he could register his marriage in Hong Kong.

8. This Office considered the Registry staff to be acting prudently in accordance with the law. It was not unreasonable for them to refuse to give “reasons in writing” as they did not know what was required by LAD. On the other hand, LAD had failed to take the initiative to understand the

reasons held by the Registry. It was indeed bureaucratic and passive, showing a lack of consideration for clients.

9. LAD issued guidelines to instruct staff to be more proactive in processing legal aid applications and to take the initiative in assisting applicants. It also issued a written apology to the complainant.

JUDICIARY

Case No. OMB 2004/0776

Judiciary – delivery of documents – delay in delivering an order to the complainant so that she was unable to appeal in time

The complainant was the defendant in a small claims case. As she did not attend the hearing, the Adjudicator at the Small Claims Tribunal ("the Tribunal") ruled in favour of the claimant. The complainant alleged that since the Tribunal had delayed the delivery of the order to her, she was not able to lodge an appeal within the seven-day period. The complainant was also dissatisfied with the Tribunal for the errors in three letters sent to her. She considered this to be negligence of the staff.

2. The Judiciary clarified that the Tribunal had followed established procedures to refer the notices and order to the relevant officer for verification and for the Adjudicator's approval. After the signature by the Adjudicator, the documents were issued to both the claimant and the defendant concurrently. There was no delay in sending them to the complainant.

3. According to records, the Adjudicator allowed her appeal out of time on condition that she first paid a $25,000 deposit to the court. The Judiciary indicated that the complainant's appeal was dismissed because she had failed to pay the deposit. It had nothing to do with the date the order was issued. As regards the errors in its letters to the complainant, the Judiciary admitted negligence. The staff concerned were duly advised and an apology was issued to the complainant.

4. As it was impossible to ascertain when the Adjudicator had actually signed the order, this Office could not comment whether there was delay in delivery. The Judiciary Administrator was urged to review and improve the workflow for the serving of orders by the Tribunal to ensure delivery to both parties before the appeal period expired. If necessary, they should consider amending the legislation to extend the time limit.

LABOUR DEPARTMENT ("LD")

Case No. OMB 2004/1462

LD – training scheme – mistakenly issuing a registration card to someone not eligible for the Graduate Employment Training Scheme

The complainant, a property services company, alleged that it had applied to LD on 3 May 2004 for a training allowance when it employed Madam A, holder of a valid registration card issued by the Department under the Graduate Employment Training Scheme ("the Scheme"). However, it was informed on the following day that it could not get the allowance because Madam A was not eligible for the Scheme and that the registration card had been issued by mistake.

2. The Scheme aimed to assist university graduates of 2003 to secure employment but did not cover holders of a master's degree. Employers who provided on-the-job training to fresh university graduates would be paid a monthly training allowance of $2,000 for each trainee engaged, up to a maximum of six months. The Scheme operated for 12 months and was discontinued on 30 June 2004.

3. When Madam A applied for enrolment in the Scheme at an LD office on 30 April 2004, she insisted on being issued a registration card at once to save her the trouble of collecting it later. Without following the normal procedures, a clerical staff issued the card before her application was approved. That clerical staff reminded Madam A not to use the card until her application had been approved.

4. That day, LD found that Madam A had a master's degree and was, therefore, not eligible. An officer immediately called her to say that her application had been rejected. LD also sent her formal notification on 3 May.

5. Upon receipt of the application for training allowance for Madam A, LD informed the complainant on the same day by telephone that she was not eligible for the Scheme and subsequently sent a letter of rejection. Meanwhile, LD also wrote to Madam A requesting her to return the registration card as soon as possible.

6. LD emphasised that this was an isolated incident and had apologised to the complainant.

7. The Ombudsman suggested that LD remind staff to observe departmental guidelines and work procedures.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2004/1284

LCSD – library management – failing to handle properly a reader's request to call the police

While reading in a public library one evening over a weekend, the complainant found a girl making a lot of noise. He asked the girl's father to restrain his daughter but was assaulted. His request to the library staff to call the police was refused. He eventually called the police himself. He complained that LCSD had failed to manage its library effectively and was shirking responsibility.

2. LCSD explained that staff and security guards were deployed to patrol and maintain order in the library during opening hours. There were guidelines on this for staff. The Department explained that the direct supervisor, a professional Librarian, had been out for meal break at the material time. The staff had failed to report the incident immediately to other supervisory officers on duty (Assistant Librarian/Librarian) and had mishandled it. Apart from sending the complainant a written apology and arranging additional staff to patrol and maintain order during peak periods on weekends, LCSD had also reminded frontline staff of the proper procedures to handle such incidents as disputes among library users.

3. Nevertheless, this Office considered that LCSD's instructions to staff that the duty assistant librarian/librarian must be notified and prior approval of the senior librarian/chief librarian obtained before reporting any case to the police too rigid and bureaucratic. We urged the Department to review such procedures and guidelines to be more flexible.

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY ("MPFA")

Case No. OMB 2004/0516

MPFA – MPF contributions – failing to monitor properly an approved trustee such that the complainant was unable to claim back the default MPF contributions from his ex-employer

The complainant stated that he had lodged a complaint with MPFA in June 2003 alleging that from October 2002 to May 2003, his ex-employer had not paid his employee's contributions to a mandatory provident fund ("MPF") scheme but continued to deduct $1,000 from his salary every month.

2. The complainant alleged that MPFA had failed to monitor properly the approved trustee of a provident fund scheme as well as the contributions by the ex-employer such that he was not able to claim back the default MPF contributions.

3. MPFA explained that according to its established policy, default cases would be handled according to different categories, viz. "non-payment" or "discrepancy". For "non-payment" cases, a Notice of Default Contribution would be issued to request employers to pay all outstanding contributions plus a surcharge within a specified period upon notification by the trustee. Special MPFA teams would inspect frequent defaulters for enforcement purposes.

4. As regards "discrepancy" cases, MPFA investigations indicated that most of them were due to employers' unintentional miscalculation. After clarification by the trustees, most employers would rectify the mistakes. MPFA, therefore, did not issue notices to the employers demanding contributions. However, MPFA would handle promptly any complaints received from the employees. It would also continue to monitor the situation through the trustees. With frequent cases of "discrepancy", MPFA would initiate an inspection and issue reminders or warning letters to the employers concerned.

5. In this case, between October 2002 and May 2003, the approved trustee had complied with the law and made monthly submissions to MPFA on the ex-employer's default contributions. It had issued written notices to require him to rectify the mistakes. However, as there was an error in the trustee's computer system, the "non-payment" of the ex-employer had been wrongly categorised as "discrepancy". As a result, MPFA had not issued a Notice of Default Contribution to or levied any surcharge on the ex-employer.

6. MPFA stated that well before the trustee submitted the reports on the ex-employer's "discrepancy", it had suspected there might be a problem in the trustee's definition of "discrepancy" cases. Subsequently, MPFA conducted a survey by questionnaire among all the trustees in November 2002 to gauge their understanding of the definition. After analysing the data collected, MPFA decided to hold meetings with the trustees on their different interpretations of "discrepancy" in February 2003. However, the meetings were postponed due to the outbreak of the Severe Acute Respiratory Syndrome ("SARS").

7. In late May 2003, when SARS subsided, a meeting was held with the trustee in which MPFA highlighted that the categorisation of "discrepancy" was incorrect. The trustee was urged to rectify its computer system immediately and to submit cases of "non-payment", which had previously been wrongly reported as "discrepancy", for appropriate enforcement action.

8. This Office considered that MPFA had complied with the legislation in monitoring the operations of trustees to gain a full picture of employers' contributions. Meanwhile, it had also followed up the trustee's incorrect categorisation of "discrepancy" cases. Although MPFA was well aware of the trustee's misinterpretation, the situation was beyond its control as rectification of the computer system would take time whilst the outbreak of SARS was an unfortunate incident. Hence, there was no maladministration on the part of MPFA.

9. This Office urged MPFA to follow up promptly all "non-payment" cases wrongly reported as "discrepancy" to safeguard employees' interests. Meanwhile, as a deterrent, it should consider levying appropriate penalties on the trustee for their mistakes.

RADIO TELEVISION HONG KONG ("RTHK")

Case No. OMB 2003/4304

RTHK – distribution of prizes – (a) delay in notifying the complainant to collect his prize; and (b) failing to respond to his enquiries

A Mainlander had won a prize in a radio programme of RTHK in August 2003. He complained that RTHK had delayed notifying him of the arrangement for collecting his prize and failed to respond to his telephone and e-mail enquiries.

2. RTHK explained that it had notified all Mainland winners by e-mail after the programme and asked them to provide personal particulars and indicate their choice of prize collection points. It was not until March 2004 that RTHK finally obtained the information from all winners. With the assistance of the programme sponsor, the prize collection points were confirmed and letters issued to the winners. The sponsor informed RTHK in April that the complainant had collected his prize.

3. RTHK staff could not recall whether the complainant had made any enquiries by telephone. Without independent evidence, this Office could not comment on this point.

4. The officer responsible for distribution of prizes said that she had sent several replies to the complainant's e-mail enquiries. However, as the e-mails had been deleted, RTHK was unable to ascertain what had actually occurred.

5. This Office also noticed that the e-mail notification to the complainant had been issued via the officer's personal e-mail account and she had not informed her successor about that e-mail. We considered such practices improper and suggested that RTHK formulate guidelines on the use of e-mail at work and remind staff to prepare detailed notes when handing over duties.

6. RTHK undertook to work out proper procedures accordingly.

TRANSPORT DEPARTMENT ("TD")

Case No. OMB 2003/3341

TD – unauthorised bus services – failing to take effective measures to stop unauthorised free bus services

The complainant's company operated green minibus services. He lodged a complaint with this Office alleging that there were non-franchised buses providing unauthorised free services. He had complained to TD, but no definite reply was given. Moreover, the Department had not taken any effective measures to stop such services.

2. TD explained that upon receipt of the complaint, it had requested the complainant to participate in a discussion to realign those two free bus routes, to achieve a “win-win” situation as free bus services could help boost the economy. After the realignment, a licence was granted to permit the operator concerned to run those two routes for five months.

3. However, the operator continued the services after the period expired and ignored TD’s warning. TD thus initiated an inquiry while the operator sought judicial review. Eventually, the operator proposed an out-of-court settlement.

4. TD said that enforcement action had been taken in accordance with existing regulations. However, the procedures involved took much time and resources. Although TD could prosecute the bus operator, it must first prove that the same driver had driven the same bus within 12 months providing more than 14 days of free bus service, which was difficult to establish. Even if the Department invoked the Road Traffic Ordinance to conduct an inquiry, it would still require evidence from a survey of more than 14 days, which would also be labour-intensive and time-consuming.

5. TD indicated that consideration had been given to streamline the procedures and amend the law so as to control such situation more effectively. Proposals for improvement would be put to a working group under the Transport Advisory Committee.

6. This Office considered that basically TD had handled this complaint according to established procedures. However, the result was not satisfactory. The free bus services had actually been in operation for over two years, but TD had not been able to solve the problem. As such problems might arise elsewhere, TD should expedite action on it. We suggested that the Department seek legal advice again to clarify whether it could in fact institute criminal prosecution against unauthorised bus operators within the existing law. If so, prosecution should be stepped up for deterrence. In addition, we advised the Department to reflect the difficulties encountered to the working group for the formulation of a more appropriate and practical policy.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/4233

HD – refurbishment allowance – poor staff attitude and delay in paying an *ex gratia* allowance to the complainant for refurbishing her flat

In early July 2004, the complainant accepted HD's offer of a public rental housing unit and chose to receive an *ex gratia* allowance from HD to refurbish the flat. In late July, the complainant called an officer at the District Tenancy Management Office under HD, requesting to move in earlier. However, the officer refused to provide assistance.

2. The complainant moved in at the end of July. She called the property management agent of the housing estate many times from then to early November regarding payment of the refurbishment allowance, but had no definite answer. In early November, the property management agent finally told her that the HD officer had inadvertently omitted her case, so she would have to wait for another two months.

3. As no grave maladministration was involved in this case, our Office suggested resolving the matter by mediation. Both the complainant and HD agreed.

4. At the mediation meeting, HD's representatives explained that the officer concerned was new to the estate and the delay was unintentional. Furthermore, the property management agent had forgotten to inform HD of the complainant's call, hence prolonging the delay. The Department had reminded staff to be courteous and helpful to estate residents and directed the property management agent to improve its service. The HD representatives also apologised to the complainant.

5. The two parties signed a mediation agreement. The complainant agreed to withdraw her complaint against HD, while the HD representatives immediately handed her the refurbishment allowance.

STUDENT FINANCIAL ASSISTANCE AGENCY (“SFAA”)

Case No. OMB 2004/1185

SFAA – application for financial assistance – delay in processing such application under the Local Student Finance Scheme

A full-time student of a local university submitted his application for financial assistance under the Local Student Finance Scheme for 2003/04. He alleged that the SFAA staff who handled his application had been particularly difficult and demanded detailed financial information from all his family members. As a result, his application still had yet to be approved by April 2004. The staff also showed very poor attitude.

2. As the case did not involve serious maladministration, this Office suggested resolving the matter by mediation and both parties agreed.

3. At the mediation meeting, SFAA representatives explained to the complainant the normal policies and procedures for processing an application and the reasons for taking a long time over his application, whilst the complainant took the opportunity to answer some queries raised by SFAA.

4. After a candid exchange of views, the two parties reached an agreement. The complainant agreed to furnish the necessary supporting information as soon as possible. The representatives of SFAA undertook to expedite the process once they received the supplementary information. SFAA also apologised to the complainant and his family members for the poor attitude of the staff.

STUDENT FINANCIAL ASSISTANCE AGENCY ("SFAA")

Case No. OMB 2004/3414

SFAA – application for financial assistance – approving erroneously the complainant's applications for student financial assistance for her sons and recovering the funds a year later, causing great distress to the complainant and her family

The complainant applied to SFAA in May 2003 for financial assistance for her sons. She was later notified by SFAA that they were eligible for different forms of subsidy, including a 50% remission in school fees. The total amount of assistance was credited into her bank account by autopay in December 2003. The complainant then received a call from SFAA in August 2004 informing her that her applications had been wrongly approved and the financial assistance granted to her sons the year before had to be recovered. SFAA meanwhile sent her a demand note and telephoned her sons' school advising it to recover the school fees.

2. The complainant considered that as an applicant she had completed the application forms honestly. Due to an unfortunate mistake by SFAA, her family suffered distress and their household budget, disruption. The incident resulted in the integrity of her family members being questioned and her sons' dignity tarnished, rendering them unable to face their schoolmates. She, therefore, complained to this Office. She demanded that SFAA issue a letter to admit its mistake in handling the case and punish the staff concerned.

3. As no systemic maladministration was involved in the case, this Office suggested resolving the matter by mediation and secured the consent of both parties.

4. The complainant's husband attended the mediation meeting on behalf of the complainant and recounted the distress caused to their family. He expressed their dissatisfaction that SFAA had not written to explain and apologise. SFAA representatives explained the general procedures in processing applications for student financial assistance and the criteria for approval. They explained the circumstances under which the sons had been wrongly granted fee remission, textbook assistance and the student travel subsidy. They apologised for the distress caused to the complainant and family. SFAA representatives also produced a letter stating the Agency's position for delivery to the complainant. Meanwhile, the complainant's husband commented on the poor arrangements by SFAA in seeking repayment and considered that SFAA should write separately to their sons' school to clarify the matter.

5. After a candid exchange of views, the two parties signed a mediation agreement. SFAA undertook to send a written explanation to the school, with a copy to the complainant. SFAA would also review its procedures for processing applications for financial assistance to prevent recurrence. The complainant agreed to withdraw her case against SFAA, whilst SFAA would consider the complainant's financial condition and accept repayment by instalment of the money wrongly granted to her sons. After the mediation meeting, SFAA took the initiative to propose some repayment arrangements for the complainant's consideration.

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Conclusion
Agriculture, Fisheries and Conservation Department		
2004/0530	(a) Failing to adequately publicise a new statutory requirement for owners of endangered species; and (b) Poor staff attitude in answering telephone enquiries	Partially substantiated*
Buildings Department		
2003/3310	Impropriety in handling a complaint about an unauthorised structure ("Pai Fong") built partly on Government land and partly on private land	Partially substantiated*
2003/4277	Delay in enforcing a removal order issued more than 20 years ago	Substantiated*
2004/0385	Failing to follow up repeated complaints about unauthorised building works	Substantiated other than alleged*
2004/1140	Negligence of duty and delay in handling a complaint about unauthorised building works	Substantiated*
Civil Engineering and Development Department		
2003/3617	Dereliction of duty over its actions in relation to the illegal excavation of natural river boulders for use in an infrastructure project	Partially substantiated*
Correctional Services Department		
2003/3373	Failing to follow established procedures in prison security, which resulted in the complainant being assaulted and sustaining injuries while in prison	Substantiated*
Electrical and Mechanical Services Department		
2003/2294 2003/2314	Errors in cremation process and failure to take appropriate remedial measures	Partially substantiated*

Index of Cases Concluded by Full Investigation

Environmental Protection Department

2003/0314	Mishandling the installation and dismantling of noise barriers at Tolo Highway	Partially substantiated
2004/1407 2004/2834 2004/2918 2004/3124 2004/3159	Failure to consider impact of traffic noise on neighbouring residents after completion of road works	Unsubstantiated

Food and Environmental Hygiene Department

2003/2020	Delay in processing an application for a vacant burial plot for disposition of human ashes	Partially substantiated*
2003/2124 2003/2148	Errors in cremation process and failure to take appropriate remedial measures	Partially substantiated*
2003/2624	Failing to take prompt action in dealing with a report on littering	Substantiated*
2003/3037	Administrative error in processing an application for exhumation of remains, which resulted in loss of the remains buried in the grave	Substantiated*
2003/3192	Failing to take appropriate action in tackling obstruction of public places by several restaurants	Unsubstantiated*
2004/1498 2004/1499 2004/1552 2004/1553 2004/1568 and others	Failing to offer *ex gratia* payment to poultry traders affected by the ban on import of chilled/frozen poultry from the Mainland	Partially substantiated*
2004/2007	Failing to take action against drying of laundry by some local residents in public places	Substantiated*

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Government Logistics Department

2004/1110	Impropriety in tender procedures which resulted in loss of a bank cashier order submitted with a tender by the complainant	Unsubstantiated*

Government Secretariat - Civil Service Bureau

2004/3845	Delay in replying to a written complaint	Substantiated*

Government Secretariat - Education and Manpower Bureau

2003/3181	Unfair arrangement in according priority appointment to surplus teachers	Substantiated
2004/0599	Administrative errors in assessing the academic qualification of a teacher	Substantiated*

Government Secretariat - Efficiency Unit

2004/1041	Failing to follow up a complaint about environmental condition after road works	Unsubstantiated*

Government Secretariat - Environment, Transport and Works Bureau

2003/0994	Mishandling the installation and dismantling of noise barriers at Tolo Highway	Partially substantiated*
2004/1226 2004/2989 2004/3006 2004/3075 2004/3245	Failure to consider impact of traffic noise on neighbouring residents after completion of road works	Unsubstantiated

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Government Secretariat - Health, Welfare and Food Bureau

2004/3251 2004/3252 2004/3253 2004/3254 2004/3255 and others	Failing to offer *ex gratia* payment to poultry traders affected by the ban on import of chilled/frozen poultry from the Mainland	Partially substantiated*

Highways Department

2003/0313	Mishandling the installation and dismantling of noise barriers at Tolo Highway	Partially substantiated
2003/3302	Failing to follow up a complaint about environmental condition after road works	Unsubstantiated*
2004/0829	Failing to take action against drying of laundry by some local residents in public places	Substantiated*
2004/1408 2004/2833 2004/2917 2004/3123 2004/3158	Failure to consider impact of traffic noise on neighbouring residents after completion of road works	Unsubstantiated
2004/1935	Providing information on road closure publicity boards	Unsubstantiated*

Home Affairs Department

2004/0059	Failing to conduct proper consultation on the issue of a new “kaito” ferry service licence by Transport Department	Unsubstantiated*
2004/0713 2004/1365	Wrongly sending the complainants five reply letters with the same contents	Substantiated*
2004/2005	Failing to take action against drying of laundry by some local residents in public places	Unsubstantiated*

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Hong Kong Housing Authority

2003/2686	Unfair allotment of shares of management and maintenance expenses in a Home Ownership Scheme estate	Unsubstantiated
2004/3351	(a) Adopting an unfair method in determining the management and maintenance cost of an access road in a public housing estate; (b) Allowing the owners of an adjacent Home Ownership Scheme estate to use the access road free of charge; and (c) Allocating all the rental revenue from monthly-charged lorry parking spaces on the access road to Hong Kong Housing Authority	Unsubstantiated

Hongkong Post

2003/4329	Mistakes by post office staff in processing payments of bills	Substantiated*

Hospital Authority

2004/0917	(a) Removal of the call button from a patient by a nursing staff, resulting in the patient's subsequent coma and death; and (b) Changing entries in the Patient Progress Sheets, with an intent to cover up	Partially substantiated*

Housing Department

2003/1765	Abuse of power in occupying part of the common area of a Tenants Purchase Scheme housing estate without consulting the owners' corporation of the estate	Partially substantiated*
2003/3252	Providing inaccurate information to Registration and Electoral Office for updating the address of a registered voter	Substantiated*

2003/3312	Failing to take enforcement action against an unauthorised structure ("Pai fong") built on Government land	Partially substantiated*
2004/0788	Delay in processing the complainant's application for a Green Form Certificate, resulting in her failure to seek a Home Assistance Loan	Partially substantiated*
2004/2198	Failing to supervise effectively a property services company, thus delaying the completion of maintenance work in the complainant's public housing unit	Substantiated*
2004/2395	Failing to take appropriate action in response to a complaint of water seepage	Substantiated*
2004/2662	Staff abuse of authority, removing or taking possession of property in the complainant's unit	Partially substantiated*
2004/3055	(a) Delayed in calling for tenders again for certain shop spaces; and (b) Failing to respond to the complainant's enquiry	Partially substantiated*
2004/3352	(a) Adopting an unfair method in determining the management and maintenance cost of an access road in a public housing estate; (b) Allowing the owners of an adjacent Home Ownership Scheme estate to use the access road free of charge; and (c) Allocating all the rental revenue from monthly-charged lorry parking spaces on the access road to Hong Kong Housing Authority	Unsubstantiated
2004/3854	Failing to settle the outstanding public housing rentals for the complainant while he was in custody in a psychiatric centre, and unreasonably recovering his housing unit	Unsubstantiated*

Kowloon-Canton Railway Corporation

2004/0531	Providing misleading information on road closure publicity boards	Substantiated other than alleged*

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Labour Department

2004/3305	False statement by staff in an investigation report	Unsubstantiated

Lands Department

2003/1498	Delay in processing a short-term tenancy application and allowing illegal occupation of Government land	Partially substantiated*
2003/2644	Delay in taking action against illegal occupation of Government land by unauthorised building works	Substantiated*
2003/3311	Failing to take enforcement action against an unauthorised structure ("Pai Fong") built on Government land, while accepting an application for Short Term Tenancy by the owner	Unsubstantiated*
2003/3562	Mishandling the complainant's application to build a small house	Substantiated*
2003/4265	Failing to revise Government rent upon redevelopment of a lot and being unfair to the current owners in asking them to pay the arrears of rent that should have been paid by the former owners	Substantiated*
2004/0964 2004/0965	Failing to clarify the land status of a car park site and leaving the car park idle for months after completion	Partially substantiated*
2004/1938	Delay and impropriety in handling the complainant's application for building two New Territories Exempted Houses	Substantiated*
2004/2006	Failing to take action against drying of laundry by some local residents in public places	Substantiated*
2004/2082	Impropriety in demanding from the complainant payment of Government rent for his premises from February 1997 to June 2004 in one go	Unsubstantiated

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Legal Aid Department

2004/0995	Failing to update the complainant's correspondence address despite her written request	Substantiated*

Leisure and Cultural Services Department

2003/3067	Abuse of power in handling a "wax burning" incident in a park at Mid-Autumn Festival	Partially substantiated*
2004/0830	Failing to take action against drying of laundry by some local residents in public places	Substantiated*
2004/1928	Unreasonable regulations on overdue fines for library materials borrowed	Unsubstantiated
2004/2362	(a) Lack of transparency in processing the complainant's application to organise a music event; and (b) Delay in processing the application	Partially substantiated*

Marine Department

2004/3284	Failing to conduct effective consultation before the establishment of three speed restricted zones for vessels	Unsubstantiated

Official Receiver's Office

2004/1109	Failure to reply to the complainant's written enquiries	Substantiated*
2004/1177	Failure to take timely action on the complainant's report against a bankrupt dishonestly borrowing money from him	Substantiated*

Privacy Commissioner for Personal Data

2004/2320	Delay in investigating a complaint against a company and failure to keep complainant informed of the progress	Substantiated*

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Rating and Valuation Department

2003/4328	Failing to reply to a complaint relating to rates payment	Substantiated
2004/2883	Impropriety in demanding from the complainant payment of Government rent for his premises from February 1997 to June 2004 in one go	Unsubstantiated
2004/3347	Failing to revise Government rent upon redevelopment of a lot and being unfair to the current owners in asking them to pay the arrears of rent that should have been paid by the former owners	Substantiated*

Registration and Electoral Office

2003/3253	Updating a registered voter's particulars without her prior consent	Substantiated other than alleged*

Social Welfare Department

2004/2042	(a) Failing to follow up properly a report of fraudulent rental allowance claims; and (b) Poor staff attitude	Unsubstantiated*
2004/2661	Staff failure to keep promise to alert complainant before Housing Department's recovery of his public housing unit	Unsubstantiated
2004/3853	Failing to settle the outstanding public housing rentals for the complainant while he was in custody in a psychiatric centre, such that his housing unit was unreasonably recovered by Housing Department	Unsubstantiated*

Television and Entertainment Licensing Authority

2003/2650	Failing to follow proper procedures in processing an application for Games Centre Licence, thereby causing delay in handling the complainant's application and misleading other applicants	Partially substantiated*
2004/2582	Delay in processing a complaint and in replying	Substantiated*

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Transport Department

2003/3598 2003/3599 2003/3600 2003/3601 2004/0389	Unreasonably declining to renew the complainants' driving instructors' licences which were issued to them on their earlier employment with a driving school	Unsubstantiated
2003/4239	Failing to conduct proper consultation and invite tenders before issuing a new "kaito" ferry service licence	Partially substantiated*
2004/0022 2004/0381	Failing to clarify the land status of a car park site and leaving the car park idle for months after completion	Unsubstantiated
2004/0673	Failing to take action against drying of laundry by some local residents in public places	Substantiated*

Treasury

2004/2575	Failing to revise Government rent upon redevelopment of a lot and being unfair to the current owners in asking them to pay arrears of rent that should have been paid by the former owners	Unsubstantiated
2004/2882	Impropriety in demanding from the complainant payment of Government rent for his premises from February 1997 to June 2004 in one go	Unsubstantiated

Water Supplies Department

2004/1549	Failing to reply to the complainant's written enquiry	Substantiated*
2004/3634	Delay in handling the complainant's report of pipe burst	Unsubstantiated

(Cases with * have recommendation(s) in the investigation reports.)

BUILDINGS DEPARTMENT (“BD”)

Case No. OMB 2003/4277

BD – removal order – delay in enforcing a removal order issued more than 20 years ago – substantiated

The complainant alleged that as BD had not followed up a removal order issued over 20 years ago against the unauthorised building works (“UBWs”) at his premises, he believed that the order had been revoked. When the Department sent him another removal order in late 2003, he had difficulty complying with the requirements.

2. The complainant’s premises were a cockloft unit, which originally formed a duplex flat with the ground floor unit. The former owner split the duplex flat into separate cockloft and ground floor units and sold them to the complainant’s mother and another buyer. The complainant’s mother resold the cockloft unit to him in October 2003. The complainant claimed that the entrance to his unit would be blocked if he reinstated the premises in compliance with the removal order.

3. According to BD, between the issue of the order in 1982 and 1986, the Department had been following up the matter. When it was found that the reinstatement works required cooperation between the owners of both units, however, a new superseding order was issued to the two owners in 1984. However, since the issue of the new order up to July 1986, the Department had not been able to reach the complainant’s mother. Because of limited resources, the Department had to focus on more dangerous UBWs and thus did not follow up the case. BD also underwent reorganisation in 1987, 1990 and 1991 and work priorities were rearranged. A task force was set up in 2000 to clear the backlog of removal orders. In January 2002, its staff made another visit to the premises to follow up the case.

4. BD explained that staff had tried to visit the cockloft unit several times but could not gain access. They could only leave a contact slip. In case of questions, the complainant should raise an enquiry. If he was worried that compliance with the order would block the entrance to his unit, he should discuss with the owner of the ground floor unit. As the removal order had been registered with the Land Registry, it would not be revoked due to the passage of time.

Our Observations

5. This Office considered BD too tolerant towards owners not complying with removal orders. It failed to take determined action when the owners did not respond. This case could have been concluded much earlier if BD had taken firm action. The case was further delayed because BD had failed to check the accuracy of the new order when the Department issued it to the owner of the ground floor unit and so had to issue superseding ones.

6. On the other hand, owners had the responsibility to comply with removal orders and to ensure the safety of their buildings. The complainant's mother had all along not responded to BD's removal orders, letters and contact slips. When BD took up the case again, the complainant blamed his own non-compliance on the Department's insufficient supervision. This was not reasonable. The complainant or his mother ought to have liaised with BD earlier to discuss a practicable solution and reinstate the premises.

Conclusion and Recommendations

7. This Office considered that BD had delayed in following up the removal order. The complaint was, therefore, substantiated.

8. The Ombudsman recommended that BD:

(a) formulate long-term strategies –

(i) having regard to the heavy backlog and degree of danger of the UBWs involved, set an annual target for clearing outstanding removal orders that have passed the statutory time limit; and

(ii) if the backlog could not be cleared within a short period of time, rationalise those UBWs that pose no imminent danger (by requiring owners to engage authorised persons to submit reports on the safety of their buildings annually and by imposing penalties with annual incremental increase);

(b) take enforcement action and prosecute uncooperative owners who failed to comply with removal orders; and

(c) remind staff to check carefully all removal orders to avoid making mistakes and generating unnecessary work such as issuing superseding orders.

9. BD accepted all our recommendations and undertook to review the clearance of backlog annually.

BUILDINGS DEPARTMENT ("BD"), LANDS DEPARTMENT ("Lands D") AND HOUSING DEPARTMENT ("HD")

Case Nos. OMB 2003/3310 - 3312

BD – complaint handling – (a) failing to handle a complaint properly and to give the complainant a written reply – partially substantiated

Lands D – enforcement action – (b) failing to take enforcement action against an unauthorised *pai fong* on Government land, while accepting its owner's application for a short-term tenancy – unsubstantiated

HD – enforcement action – (c) failing to take enforcement action against the unauthorised *pai fong* – partially substantiated

After purchasing a house in the New Territories, the complainant found that a *pai fong* and a boundary wall adjoining her house were built partly on her land and partly on unleased Government land. She, therefore, complained to BD, Lands D and HD, but was not satisfied with the way they handled her case.

Complaint (a)

2. At first, probably because of insufficient details given by the complainant, BD staff went to inspect a different place. Upon receipt of relevant drawings from her, BD arranged another inspection.

3. The complainant doubted the accuracy of BD's inspection because it involved only a visual inspection of the structures and taking of some photographs. She e-mailed BD several times to enquire about the inspection result, asking also for clarification on who should be responsible for assessing the safety of the structures and for compensation in case of injury, death or damage resulting from collapse of the structures. Nevertheless, BD only replied by telephone that the structures posed "no imminent danger", without addressing the question of compensation.

4. BD explained that visual inspection was its normal practice for assessing the safety of structures. Its staff had told the complainant the result immediately after their site inspection. BD had also informed her via Government's Integrated Call Centre that the structures posed no imminent structural danger. As the method of inspection involved professional judgement, it was outside our jurisdiction.

5. However, this Office considered that there were inadequacies in BD's reply. As the Department had not given the complainant a clear and substantive written reply, she had to make a number of enquiries by e-mail. We understood that the question of compensation involved complicated legal issues. However, BD, rather than being so evasive, should have followed its internal guidelines and replied in writing, stating clearly to the complainant that the issue was outside its jurisdiction and that she should seek legal advice.

6. Complaint (a) was, therefore, partially substantiated.

Complaint (b)

7. The complainant had sent e-mails to the relevant District Lands Office ("DLO") under Lands D to enquire whether the structures were legal and safe. DLO replied that it had never issued any licence for the structures and that her enquiries had been referred to HD's Squatter Control Office ("SCO") to verify whether the number marked on the boundary wall was a squatter control survey number.

8. The owner of the structures ("the owner") subsequently applied to DLO for a short-term tenancy ("STT") for the Government land occupied by the structures. The complainant alleged that DLO had favoured the owner in accepting the application.

9. This Office deemed it acceptable that DLO awaited SCO's confirmation of whether the structures were covered by squatter control survey before considering any further action, otherwise the two departments might act inconsistently.

10. The root of the problem lay in the intrusion of the structures into the complainant's land, which could be resolved only by settlement between the complainant and the owner. However, DLO was responsible only for dealing with the occupation of Government land by the structures. This Office agreed that DLO should take decisive and effective action to regulate such occupation by way of STT. This was in line with Lands D policy and not favouring the owner.

11. Complaint (b) was, therefore, unsubstantiated.

Complaint (c)

12. Lands D told the complainant that it had to wait for SCO's verification of squatter control record whilst SCO said it had to wait for Lands D's assessment of the owner's STT application. As a result, the complainant was very dissatisfied.

13. HD found it technically not feasible to demolish that part of the *pai fong* on Government land as that would affect the remaining part and even the boundary wall on private land. The dispute over the structures on private land should be resolved by settlement between the complainant and the owner. To avoid inconsistency in decision and action between the two departments, SCO needed to wait for Lands D's assessment of the STT application before it could decide on the demolition of that part of the *pai fong* on Government land.

14. This Office considered it reasonable and responsible of HD to wait for Lands D's decision on the STT and action on the structures before considering any demolition action. Nevertheless, HD took three months just to reply that the structures did not have a squatter control survey number. HD explained that its staff had been occupied by other projects whilst the Department itself was being reorganised. This Office believed that there had been inadequacies in HD's staff deployment and supervision, thus adversely affecting SCO's service.

15. Complaint (c) was, therefore, partially substantiated.

Conclusion and Recommendations

16. Overall, this complaint was partially substantiated.

17. This Office recommended that:

(a) BD remind staff to handle enquiries and complaints carefully and to give substantive replies as soon as possible;

(b) Lands D consider approving the STT on the premise that this would not affect appropriate legal action against the structures by the departments and parties concerned;

(c) HD review its staffing, supervision and staff handover arrangements to ensure that no service would be neglected or delayed; and

(d) the complainant resolve the dispute over her private land by legal proceedings.

18. The three departments accepted our recommendations.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2003/2020

FEHD – urn graves – (a) failing to adhere to legal requirements to keep a register of urn spaces for public inspection; (b) failing to notify the complainant of the result of his application after more than ten weeks; (c) losing a copy of the complainant's birth certificate and requiring him to take an oath to affirm his kinship with the deceased; (d) suspected divulgence by its staff of personal data in the complainant's application; and (e) handling his complaint perfunctorily – partially substantiated

The complainant, noting the urn space next to his late father's grave in a cemetery had been vacated, intended to apply for that space for his deceased mother. He went to an office of the Cemeteries and Crematoria Section (the "Office") under FEHD in April and October 2002 for enquiries but was advised verbally that the space was not vacant. As the Office did not keep a register of urn spaces for the cemetery in question, the complainant was unable to check the records himself although he believed the FEHD staff had given him incorrect information. Afterwards, he wrote to ask FEHD about its latest situation. In December 2002, he received a written reply that the space had become vacant and available for application. The complainant followed the Guidance Notes to Application for Used Urn Spaces and completed his application at the Office that month. However, as there was no response by mid-February 2003, he telephoned FEHD and learned that his application was still being processed.

2. In late February 2003, FEHD notified him that his application had been approved and asked him to pay the fees within 14 days. In early March 2003, he went to the Office for the formalities but was told that his file was missing. As he did not bring along his birth certificate that day, the staff asked him to take an oath to affirm his kinship with the deceased. He refused to do so and said he would complain to the management. Next day, he received a call from FEHD that the documents had been found. He was asked to complete the formalities, which he did accordingly.

3. In March 2003, the complainant lodged a complaint with FEHD through the Integrated Call Centre under the Government Secretariat and a newspaper against the staff of the Cemeteries and Crematoria Section for dereliction of duty. In mid-April 2003, he enquired with FEHD by e-mail about the progress of his complaint but had no response. However, the next day, he found FEHD's reply to his complaint in the newspaper. It was not until two weeks later that he received FEHD's written reply. He criticised the Department for disparity in treatment in attaching importance to the media rather than the complainant. Moreover, he held that the Department had failed to give him a satisfactory reply.

4. In late April 2003, when the complainant went to the cemetery to pay respect to his ancestors, a relative living nearby told him that a person of unknown identity had been enquiring whether he had applied for the urn space. The complainant felt surprised and suspected that FEHD staff had divulged his personal information.

Complaint (a)

5. FEHD said there was no legal requirement that a register of graves should be kept in places other than the cemeteries for public inspection. There was, therefore, no impropriety even though the complainant could not check the register of the cemetery in question at the Office.

6. This Office considered that FEHD had already kept a register in that cemetery for public inspection. It was legal and reasonable for the Department not to keep one in the Office as there was no such provision in the Public Cemeteries Regulation. In this light, we considered complaint (a) unsubstantiated.

7. However, in the course of our investigation, we discovered that the Department had not kept a register in all its public cemeteries. FEHD explained that in some remote cemeteries or those where no more burials were accepted, no register was kept for operational reasons and for better use of resources. Nevertheless, the Department had kept those registers in other offices for public inspection in accordance with the relevant legislation. This Office considered that FEHD might have contravened the rules in section 4 of the Public Cemeteries Regulation.

8. As for the allegation that FEHD staff had given him incorrect information when he enquired about the availability of the urn space, FEHD pointed out that there were numerous enquiries each day and it could not possibly take down all of them. Hence, the Department was unable to check why there was an incorrect reply. FEHD suggested that it was neither necessary nor cost-effective to keep a complete written record of all simple verbal enquiries.

9. This Office was of the view that if the complainant's allegation was true, the FEHD staff should be censured. Had there been a written record of the enquiry, it would have helped to identify who should be responsible and also served as concrete evidence.

Complaint (b)

10. FEHD said the delay in processing the complainant's application was due to his missing file. A written apology had been sent to him. The Department had reviewed its despatch procedures. Meanwhile, it would bring up original files to subject officers on schedule to ensure no delay or loss of files.

11. As FEHD had in fact delayed the complainant's application, complaint (b) was substantiated.

Complaint (c)

12. FEHD explained that as the complainant's file could not be located at that time, a separate file was opened to handle his application. Since the copy of his birth certificate submitted was also missing, he was requested to take an oath to affirm his kinship with the deceased. FEHD regarded the action by the staff flexible and practical and would help the complainant. However, the Department was aware of the complainant's dissatisfaction and was willing to issue an apology.

13. This Office noted that FEHD had approved the complainant's application before locating the file and issued a letter requesting him to complete the formalities and to pay the fees in person at the designated office within 14 days. There was no mention in the letter about the missing file or the need for him to take an oath or to bring along his birth certificate. When the complainant went to the Office, however, FEHD staff insisted that he should take an oath or they would not process his application. This Office considered it unreasonable.

14. In view of the above, this Office considered complaint (c) substantiated.

Complaint (d)

15. FEHD stated that the complainant's application had been handled by only one officer and that officer had already resigned. The Department could not comment whether she had divulged information. Furthermore, it had also asked the other staff in that cemetery but they all claimed no knowledge of the application. Our interviews with the staff of that cemetery also could not prove that FEHD staff had unduly divulged the complainant's data.

16. With the lack of independent evidence, this Office considered complaint (d) unsubstantiated.

Complaint (e)

17. FEHD explained that as the complaint involved its staff, they had to investigate whether disciplinary action was necessary. A full reply could, therefore, be given to the complainant only when the study was completed. There was no disparity in treatment.

18. The Ombudsman considered FEHD's explanation about giving its reply to the newspaper well before the complainant far-fetched and unconvincing. Our investigation also revealed that upon

receipt of the complainant's subsequent e-mail enquiry, FEHD did not issue an interim reply according to its guidelines. The Department explained that as the enquiry was related to his earlier complaint, it was not necessary to issue an interim reply within ten days. This Office found that unacceptable because its performance pledge stated clearly that a reply would be issued within ten days. The pledge would not allow any arbitrary discretion by the Department not to reply.

19. This Office further discovered that the Department had not followed its departmental guidelines to issue an interim reply to the complainant when it could not provide a substantive reply within 21 calendar days on the progress of its investigation. Meanwhile, its "substantive" reply to the complainant was too brief, on the excuse that "the documents were missing and could not be located in time" without even mentioning the affirmation incident that the complainant was most unhappy about. That was indeed perfunctory.

20. In view of the above, FEHD did handle the complaint in a perfunctory manner. Complaint (e), therefore, was substantiated.

Conclusion and Recommendations

21. Overall, the complaint was partially substantiated.

22. This Office considered that FEHD should adopt improvement measures to avoid the same mistakes. In this connection, we recommended that FEHD:

(a) seek legal advice as soon as possible to clarify whether there was any contravention of section 4(1) and (3) of the Public Cemeteries Regulation for failing to provide a register at every public cemetery for public inspection;

(b) send the complainant a detailed explanation and an apology in writing for causing dissatisfaction and inconvenience in asking him to take an oath to affirm his kinship with the deceased;

(c) apologise to the complainant for failing to send its reply to him and the newspaper concurrently. It should also instruct staff to reply to complainants and the media simultaneously under similar circumstances;

(d) instruct staff to strictly follow the administrative circulars and performance pledge to duly issue the replies required; and

(e) review its existing practice of not keeping any written record of verbal enquiries and replies and formulate practical record-keeping measures for verification.

23. The Ombudsman was pleased to note that FEHD had learned the lesson, rectified its irregularities and accepted our recommendations for implementation.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2003/2624

FEHD – handling of offence report – delay in handling a reported littering offence resulting in prosecution being time-barred – substantiated

The complainant alleged that in January 2003 she saw a van driver throw a cigarette butt onto the street. She faxed a "Littering From Vehicle - Report Form" to FEHD on the offence.

2. After examining the facts and noting that the alleged driver had got out of his vehicle when throwing the cigarette butt, a Health Inspector ("Inspector A") classified the offence as "littering in public places" actionable under section 4(1) of the Public Cleansing and Prevention of Nuisances Regulation ("Regulation"), instead of "littering from specified vehicles" under section 9A. He checked with the Transport Department ("TD") and was advised on 10 March 2003 that the vehicle owner was a limited company. He wrote to the Companies Registry on 29 April, seven weeks later, and received the registration details of the company on 27 May.

3. On 13 June 2003, FEHD sent a letter to the company asking for the personal particulars of the driver concerned. The company did not respond. On 30 August, Inspector A wrote to notify the complainant that no prosecution could be instituted as the vehicle owner had refused to disclose the driver's identity. He also stated that the case was time-barred from legal action because six months had elapsed since the alleged offence. The complainant was disappointed that FEHD should have treated the matter so casually.

4. Neither section 4(1) nor section 9A of the Regulation requires the registered owner of a vehicle to inform FEHD of the particulars of the driver of his vehicle. If the owner refused to provide such information, the Department could process the case on its own.

5. FEHD did not have any specific guidelines or circulars for staff in conducting enquiries into reports of offences under sections 4(1) and 9A of the Regulation. The Department kept a prosecution record book for monitoring purposes and FEHD officers were expected to take into account the six-month statutory time bar when processing a case. This case suggested an unfortunate disregard by staff for due diligence.

6. Inspector A stated that he had taken two weeks' vacation leave from 10 March to 28 April 2003 with no one taking up his duties in his absence. Then he had a heavier workload because of the outbreak of Severe Acute Respiratory Syndrome. He did not issue any reminders to the registered owner of the vehicle after FEHD's first letter to the owner on 13 June and before the final reply to the complainant in late August. As a result, idle periods adding up to four months had been wasted. We found this most unacceptable for a case with statutory time bar.

7. The Department had failed to meet its performance pledge at the early stage in sending a belated acknowledgement to the complainant on 25 February 2003. It had also failed to inform her at once when the offence became time-barred from prosecution on 29 July. FEHD's handling of this case had been slipshod and inconceivably casual. This complaint was substantiated.

Recommendations

8. The Ombudsman recommended that FEHD:

(a) remind staff to comply with its performance pledge;

(b) brief staff on the interpretation and operation of relevant statutory provisions;

(c) issue specific guidelines or circulars for investigating reports of offences under sections 4(1) and 9A of the Regulation;

(d) stipulate specific time-frame for staff when handling such cases;

(e) deploy suitable staff to take up the duties of colleagues on leave;

(f) tighten the arrangements for monitoring progress of cases under investigation;

(g) seek legal advice on actions FEHD may take if the registered owner of a vehicle fails to disclose information required for consideration of action;

(h) consider, in consultation with the relevant policy bureau, the need for amending the Regulation to make such disclosure mandatory as an aid to investigation;

(i) consider using separate forms for reporting offences under sections 4(1) and 9A of the Regulation;

(j) issue a letter of apology to the complainant; and

(k) review each and every time-barred case to identify the causes for such and to decide on systemic improvement measures.

9. FEHD accepted all of the above recommendations except (h) on the grounds that vehicle owners would generally disclose the identity of the driver so as to relieve their liability. However, this Office considered that there may well be circumstances where a vehicle owner has no liability whatsoever without identifying the driver. As such, the owner would have no incentive to disclose the driver's identity. In this light, a statutory power is necessary for the public authority to require the vehicle owner to supply information for effective investigation of an offence. FEHD should, therefore, reconsider our recommendation (h), and seek relevant legislative amendments to appropriately expand its investigation power. FEHD is seeking legal advice on this.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2003/3037

FEHD – exhumation of remains – impropriety in handling an application for exhumation of remains, resulting in the remains of the complainant's mother being exhumed and cremated by a stranger several years ago and subsequently lost – substantiated

The complainant's mother had passed away in 1964 and her remains were buried in an urn grave cemetery in 1971. The cemetery was at that time under the management of the then Regional Services Department ("RSD") but FEHD took over in January 2000. As part of the grave was damaged, the complainant had it repaired in 1993. She did not know that the remains in the grave had been exhumed.

2. In April 2003, the complainant's father applied to FEHD for exhumation of his late wife's remains for cremation and safekeeping in a columbarium. FEHD then discovered that in 1985, exhumation of the remains had been granted to a Mr A for cremation and the ashes taken away. The Department tried to contact Mr A but to no avail. The whereabouts of the ashes were unknown. In July 2003, FEHD dismantled the grave, without notifying the complainant and her family, to re-sell the space. Greatly dissatisfied, the complainant lodged a complaint with this Office.

3. The complainant further claimed to have spent some $5,000 to restore the grave in 1993 and then some $32,000 for a private niche for the reinterment of her mother's ashes before the incident came to light. She hoped that FEHD would compensate for the loss.

Exhumation Procedures

4. The 1985 Operation Manual of the former RSD required application for removal or exhumation of human remains to be made at its Cemeteries and Crematoria Section ("C & C Section") by completing an application form and enclosing documents to prove the kinship with the deceased. Upon verification and payment of the fees, a permit would be issued to the applicant. In the absence of documentary proof, the applicant should provide a sworn declaration instead. FEHD believed Mr A to have followed the proper procedures and been granted a permit in 1985.

5. Nevertheless, FEHD was unable to confirm whether Mr A had applied as next of kin or on a sworn declaration as a person of proper interest. As such, this Office could not ascertain whether there was any kinship between Mr A and the complainant's deceased mother.

Verification of Applicant's Identify

6. In March 2003, on learning that the remains of the complainant's mother had been exhumed by a stranger, FEHD immediately tried to contact Mr A. A letter, issued to the address provided by Mr A, was returned. On checking with the Land Registry, FEHD learned that the property in question had been sold in 1986. The Department further enquired with the undertaker that carried out the exhumation for Mr A. However, it was so long ago that the records were already destroyed.

Handling of Records

7. FEHD indicated that its C & C Section kept only records of exhumation applications since 1988. Those before that were "nowhere to be found". As we could not check the records on the case, we could not verify FEHD's assumption, i.e. that Mr A ought to have made his application in accordance with the procedures.

8. Set up in January 2000, FEHD took over the functions of the former RSD and Urban Services Department, including the management of cemeteries. It was impossible for FEHD to find out from its records the identity of the RSD staff who had handled the application.

9. This Office noticed that FEHD had taken over all of the former RSD files and records on the cemeteries and crematoria in the New Territories. According to FEHD, it had never destroyed any of them. Nevertheless, FEHD was unable to locate such past records before 1988. This Office noted that the Department had failed to follow departmental guidelines to formulate procedures and timetables for the disposal of inactive records on cemeteries and burials. Inadequacy in its maintenance of files and records was evident.

FEHD's Computer Records

10. This Office noted that much of the data in the Department's computer system was input after the late 1980's and many records did not include the particulars of the applicants who applied to bury the remains. In the absence of full information, this Office could not possibly ascertain whether Mr A had buried someone of the same name in the said urn grave cemetery before 1985. As the computer records contained only the data of those applicants who applied for burials, they would not have Mr A's particulars if he was not the original applicant for the burial.

Arrangements on Removing Grave

11. In March 2003, FEHD received the complaint. Inspection confirmed that the grave was empty and the remains had been exhumed. In early July 2003, the Department dismantled the grave to re-sell the space without notifying the complainant and her family.

12. In general, urn spaces were for permanent burial. However, when the remains were exhumed, the spaces would be recovered and arranged for resale. The Department stressed that since the grave space had been "returned" to the former RSD in 1985, it was listed as "an empty grave" and

became available for reallocation. Its staff only followed the normal practice to dismantle the grave after confirming that it was "empty" in July 2003.

13. This Office, however, considered there to be impropriety on the part of FEHD because the staff had failed to follow the Public Cemeteries Regulation and notify in writing the "next of kin" of the deceased, i.e. the complainant and her family, before dismantling the grave.

Conclusion and Recommendations

14. As the former RSD had delayed in resuming the grave space in question, the complainant and her family could not realise earlier that the remains had been exhumed and so missed the opportunity to trace the whereabouts of the ashes. Furthermore, FEHD's computer records were incomplete and management of the files and records was unsatisfactory. FEHD had also not had regard for the complainant's feelings when it resumed the grave space. The Ombudsman, therefore, considered the complaint substantiated.

15. The Ombudsman recommended that FEHD:

(a) issue a written apology to the complainant for failing to notify her and her family before dismantling the grave;

(b) draw up a timetable for destroying the C & C Section's inactive files and records and ensure that other old files and inactive records were duly and regularly disposed of or destroyed; and

(c) instruct frontline staff to ensure that the burial information input into the computer database was complete and accurate.

16. Generally, The Ombudsman would not intervene in compensation claims as they were not administrative matters and leave legal liability to be resolved in court. However, in this case, the complainant had sought legal advice and tried in vain to claim compensation through the legal channel. She had also indicated that she would not lodge her claim through civil proceedings. As it was due to the impropriety of the Department that the complainant and her family had to suffer from the financial loss, The Ombudsman suggested that FEHD make an appropriate compensation to the complainant.

17. FEHD had accepted and implemented our recommendations.

HIGHWAYS DEPARTMENT ("Hy D"), ENVIRONMENTAL PROTECTION DEPARTMENT ("EPD") AND ENVIRONMENT, TRANSPORT AND WORKS BUREAU ("ETWB")

Case Nos. OMB 2003/0313 - 0314; OMB 2003/0994

Hy D, EPD and ETWB – noise barriers – maladministration in installing and removing noise barriers at Tolo Highway – partially substantiated

The complainant alleged that there had been maladministration by Hy D, EPD and ETWB in installing and then removing the noise barriers along Tolo Highway. He considered it a waste of public money to remove the noise barriers when an Environmental Impact Assessment ("EIA") study had already confirmed the need for them. He also considered that as the barriers were too colourful, they could be a hazard to road safety.

Installation and Removal Processes

2. To cope with the increasing traffic, Hy D had proposed widening one section of the Tolo Highway from dual three lanes to dual four lanes. In April 1997, Hy D's consultants completed an EIA study, which confirmed that certain existing and planned developments would thus be affected by noise exceeding the statutory limit. They, therefore, proposed the installation of noise barriers. The planned developments were mainly in the Pak Shek Kok ("PSK") reclamation area and Tai Po Area 39 ("Area 39"). In November 1998, EPD issued an Environmental Permit ("Permit") for the Tolo Highway Widening Project ("the Project"), requiring installation of the noise barriers.

3. In March 1999, Hy D awarded the project contract. As there was no firm schedule for the Area 39 developments, Hy D specified only the foundation work of the noise barriers in the contract while the installation of the upper parts of the noise barriers was included as a "provisional item" only. In September 1999, as there would be no firm development programme for Area 39 before 2004, Hy D confirmed that the "provisional items" would not be carried out.

4. In June 2000, the Town Planning Board proposed to cancel the installation of noise barriers for the PSK developments due to a change in their schedule. In August 2000, an inter-departmental meeting agreed to defer the installation of the noise barriers for Area 39. The Lands Department also agreed to require the developers, as a land sales condition, to take noise mitigation measures in the PSK reclamation area. Hy D cancelled the installation of the noise barriers for PSK after obtaining EPD's approval to vary the Permit conditions. In August 2000, Hy D also sought a variation of the conditions so as to defer the noise barriers works for Area 39.

5. In January 2001, however, EPD told Hy D that a new EIA study and public consultation would be required for the proposed deferment. Hy D estimated that the whole process would take eight months. If the application was rejected after the EIA process, the noise barriers works would fall

behind the schedule stated in the Project contract. There would then be claims from the contractors. Hy D, therefore, decided in March 2001 to install the noise barriers for Area 39.

6. However, some people expressed concern that the noise barriers obstructed road users' view of the harbour and that the need for the barriers was not great because there were only a limited number of residential buildings in the vicinity of some sections of the Highway. In November 2002, ETWB briefed the Panel on Transport of the Legislative Council on the Project and the installation of the noise barriers. The Bureau undertook to review the provision of noise barriers. In January 2003, new guidelines on their provision were formulated and explained to the Panel as well as that on Environmental Affairs.

7. In April 2003, Hy D applied to EPD for a variation of the Permit conditions so as to remove or modify the noise barriers. EPD approved the application in May on condition that the noise barriers be reinstated before the completion of the developments in Area 39 and The Chinese University of Hong Kong. The removal and modification of the noise barriers were generally completed in May 2003.

Observations and Opinions

8. We considered that Hy D could have completed the necessary EIA procedures in time for deferring the installation of the noise barriers and thus avoided their removal and modification, if it had applied for a variation of the Permit conditions in September 1999 when the decision to defer the works was made, instead of in August 2000. The complaint against Hy D was, therefore, partially substantiated.

9. We noted that EPD insisted in January 2001 that Hy D go through the whole EIA procedure if it wished to defer the installation of the noise barriers. However, in April 2003, EPD merely asked for supplementary EIA information without insisting on repeating the whole EIA procedure when Hy D applied for a variation of the conditions. Such inconsistency reflected that EPD had been bureaucratic or over-cautious previously, but was far more accommodating later. If EPD had been more flexible in 2001 towards Hy D's application for deferring the installation of noise barriers, the subsequent removal and modification could have been avoided. The complaint against EPD was, therefore, partially substantiated.

10. As for ETWB, although it had consulted the Panels on Environmental Affairs and on Transport of the Legislative Council and some District Councillors on the removal of the noise barriers, it had not conducted more extensive consultation on the impact of the removal, particularly the inconvenience caused to road users by prolonging the temporary traffic arrangements. We also doubted the magnitude of the "public" concern about the blocking of the harbour view. Furthermore, the new guidelines on the provision of noise barriers should apply to new projects and not retrospectively to current works. Removal of noise barriers already built constituted a waste of public resources. The complaint against ETWB was, therefore, partially substantiated.

Conclusion

11. Overall, the complaint was partially substantiated. The choice of colours for the noise barriers was a professional matter and, therefore, outside our jurisdiction.

Recommendations

12. This Office recommended that ETWB:

(a) review its policy making procedures and develop ways to balance different views;

(b) direct those departments responsible for road projects to coordinate with departments such as EPD for varying the Permit conditions as early as possible if changes to the land use of the areas affected by the noise were expected; and

(c) remind all works departments to allow in works contracts sufficient time for public consultation on adjustments to noise mitigation measures.

13. Hy D fully accepted our findings and recommendations.

14. Although EPD and ETWB did not accept that they should be partly responsible for the matter, The Ombudsman, after considering all the relevant factors, maintained her conclusion and recommendations.

HOME AFFAIRS DEPARTMENT (“HAD”)

Case Nos. OMB 2004/0713; OMB 2004/1365

HAD – mailing arrangements – sending each of two complainants five identical letters, thus wasting public resources – substantiated

A District Office (“DO”) under HAD consulted local residents on a certain issue. Afterwards, the DO informed the complainants, Mr A and Mr B, of the outcome of the issue by sending them each five identical letters. The complainants considered the DO’s arrangements perfunctory and wasteful.

2. In this case, the DO had sent out consultation letters to residents of a building including the complainants. Subsequently, it sent letters to those respondents who had raised an objection, to inform them of the outcome of the issue. As four respondents had supplied Mr A’s address as their residential addresses and there was a clerical error by DO staff, Mr A received five such letters. As for Mr B, five respondents had supplied his address as their residential addresses, so he too received five such letters. Moreover, all such letters did not have the addressees’ names.

3. We appreciated DO's concern over the need to maintain privacy and to inform each respondent and, therefore, did not consider such individual mailing wasteful. However, the names of the addressees should have been clearly and correctly written on the envelopes.

4. This complaint was, therefore, substantiated.

5. HAD agreed to improve its practice accordingly. It also accepted our recommendations to send written apologies to the complainants and to issue clear guidelines to all DOs to avoid occurrence of similar incidents.

HOME AFFAIRS DEPARTMENT ("HAD"), LANDS DEPARTMENT ("Lands D"), FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD"), LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD"), HIGHWAYS DEPARTMENT ("Hy D") AND TRANSPORT DEPARTMENT ("TD")

Case Nos. OMB 2004/0673; OMB 2004/0829 - 0830;
OMB 2004/2005 - 2007

HAD – street management – failing to resolve the problem of laundry drying in public places, thus marring the cityscape – unsubstantiated

Lands D, FEHD, LCSD, Hy D and TD – street management – failing to resolve the problem of laundry drying in public places, thus marring the cityscape – substantiated

The complainant walked past a pleasant tree-lined pedestrian link everyday. Regrettably, the beautiful environment was marred by laundry hung on the trees and railings of public staircases. Complaints were lodged with the Housing Department ("HD"), Hy D and FEHD. However, they all said that the problem was "outside their jurisdiction". HAD indicated that the issue had to be tackled jointly by several Government departments. Consequently, a complaint was lodged with this Office.

2. Our investigation covered six Government departments: HAD, FEHD, Lands D, LCSD, Hy D and TD.

3. Lands D, HAD, FEHD, Hy D, TD, the Buildings Department ("BD") and the Police held an inter-departmental meeting in mid-November 2003 to discuss the "grey areas" in street management. Removal of laundry in public places was on the agenda. Representatives reaffirmed that their respective departments were not authorised to deal with this problem. They finally agreed that, pending Hy D obtaining legal advice, they should refer repeated complaints within a particular district to the relevant District Office ("DO") for it to advise the residents against such practice.

Supplementary Information from Departments

4. The local DO wrote to the management offices and owners' corporations of the public housing estate concerned and private residential developments nearby, asking them to deal with the problem. It further convened an inter-departmental meeting in mid-May 2004 ("May meeting"), which was attended by representatives from Lands D, FEHD, LCSD, Hy D and TD (the "five Departments"). DO suggested that warning signs be posted at laundry drying black spots in the district to warn residents before the five Departments took action to remove laundry. Besides drawing up a list of black spots in the district, the DO also designed warning signs for departments to post at black spots within their jurisdiction. HAD considered it more effective for a single department to take action, but none had the proper authority to tackle the problem under existing legislation.

5. Lands D indicated that under the Land (Miscellaneous Provisions) Ordinance, it could remove only structures on unleased Government land. Moreover, offenders must be given at least one day's prior notice. To invoke the legislation and take enforcement action against laundry hung for only a few hours would not be practical. The Department believed that it should adhere to the decision at the May meeting, i.e. to take inter-departmental action against the problem.

6. FEHD explained that laundry hung by the local residents were not rubbish. As they would not cause inconvenience to street-sweepers or obstruct passageways, there was no basis for the Department to invoke the Public Health and Municipal Services Ordinance or the Summary Offences Ordinance and take enforcement action. On the other hand, according to the decision at the May meeting, laundry could be put on the ground by staff of departments concerned and then be treated as rubbish by FEHD staff if their owners did not take them back. FEHD considered that the Government should educate the public, and designated drying areas for laundry be set up within housing estates.

7. LCSD claimed that it was only responsible for the maintenance of plants in the area in question but not authorised to remove laundry hung there. The Department had, following the decisions at the May meeting, put up warning signs there to urge residents not to dry their laundry in public places. The situation had now improved. LCSD indicated that before starting maintenance works on plants, its staff would remove laundry hung on the trees and put them on the ground just next to the trees.

8. Hy D considered that under the Road Traffic (Traffic Control) Regulations, its staff could only take action to remove obstacles when they cause obstructions to road/maintenance works, or when they pose a threat to pedestrians or vehicles. It further pointed out that drying of laundry in public places was a district problem in which facilities under several departments were involved. The issue was thus best dealt with through inter-departmental efforts coordinated by the local DO, lest individual departments had to face alone residents upset by such enforcement action.

9. TD indicated that drying of laundry in public places had nothing to do with transport management and control. The problem, therefore, did not fall within their jurisdiction. Besides, the site in question was some distance from roads and pedestrian crossings. To dry laundry there should not affect the traffic, nor pose a danger to vehicles or pedestrians. TD would normally refer such complaints to the

department responsible for the district concerned. Complaints received from other departments would be assessed from a traffic control perspective to determine whether the safety of road-users had been compromised.

Observations and Opinions

10. DO had written to various parties concerned, convened the May meeting, drawn up a list of black spots and even designed warning signs for other departments to use. It had performed appropriately as a district coordinator and was proactive in coordinating inter-departmental efforts to find solutions to the problem.

11. Lands D had the duty to keep unleased Government land free from illegal occupation. To dry laundry in public places is to occupy Government land for private use and so the Department should take action. Lands D did not do so because of a certain technicality, i.e. at least one day's notice should be given. It had actually dodged its responsibility in solving the problem.

12. Laundry hung in public places marred the cityscape and scenery. FEHD also did not focus sufficiently on the problem. As the Department is already authorised to remove publicity materials, by extension, it should be empowered to remove laundry hung in public places. If necessary, it could consider amending the Public Health and Municipal Services Ordinance.

13. Drying of laundry on trees was not a new issue, but LCSD sidestepped the problem and did not attempt to find a solution.

14. One of the spots of drying of laundry in question was railings of staircases on slopes. It meant that pedestrians could not use the railings as handrails because of the laundry, thus affecting their safety. Hy D did not take enforcement action to remove the laundry.

15. Laundry hung along the pavement would cause obstructions or even danger to vehicles if they ever got blown onto the roads. The problem therefore had a bearing on transport management and control. However, TD, just like other departments, was only concerned with its own perspective, and did not focus on finding a solution from a wider perspective of the Government as a whole.

Conclusion

16. This Office considered that the local DO under HAD had played a proactive role in coordinating inter-departmental efforts to find solutions to the problem. The complaint against HAD, therefore, was unsubstantiated.

17. The five Departments claimed that they had no authority to take action on their own. If so, whence did their authority for joint enforcement action come? This Office was of the view that, actually, none of them was willing to assume the sole responsibility or a leading role in solving the problem. They had procrastinated and failed to take action. Therefore, the complaint against the five Departments was substantiated.

Final Remarks

18. The five Departments were overly concerned that their individual enforcement actions might lead to confrontation with residents and would like DO to take up the responsibility of coordinating joint action. However, inter-departmental action required time for planning and coordination and could only be a stopgap measure, not a long-term solution to the problem. The five Departments should get legal advice with a view to seeking empowerment for them to act within their own jurisdiction against laundry hung in public places. An agreement should be reached within the Administration for a single department to take up a leading role in enforcement action to remove laundry as a matter of routine. This might involve legislative amendment, if needed.

19. This case illustrated clearly the inability or indecision on the part of the departments concerned to resolve the problem. To remedy the lack of effective central coordination, The Ombudsman had requested the Chief Secretary for Administration ("CS") to intervene and to consider authorising a particular department to assume the "lead" responsibility to deal with the problem; the necessity of amending existing legislation to ensure that departments have the necessary legal authority for enforcement actions; as well as to study with HD, HAD and BD the feasibility of designating areas for laundry drying within public housing estates, Home Ownership Scheme estates and private residential developments.

20. In response, CS had directed HAD to conduct a comprehensive review to come up with a solution to the problem.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2003/1765

HD – occupation of common area – allowing its Tenancy Management Office to occupy part of the common areas of a Tenants Purchase Scheme estate – partially substantiated

The Owners' Corporation ("OC") of a Tenants Purchase Scheme ("TPS") estate alleged that HD had occupied part of the common areas of the estate for three years without the owners' consent. The Department had used the site as its Property Management Services Office ("PMSO") for management of the estate and also as its Tenancy Management Office ("TMO") for leasing and sale of the housing units that it owned as developer. The OC considered HD's occupation of the common areas for its TMO to infringe upon the owners' common ownership and demanded HD to explain and compensate the OC at market rate.

2. HD admitted occupation of the site but refused to compensate the OC at market rate. It pointed out that since the site could not be used for commercial purposes, the OC had not suffered any loss of rent as a result of its occupation. It had used the site temporarily because it had no other choice and the TMO was meant to serve both public housing tenants and prospective owners. HD

had not gained any actual benefits. Unless the OC could prove its loss, the Department would not consider compensating the OC.

3. This Office noted that under the Deed of Mutual Covenant ("DMC"), HD as Manager of the estate could authorise Government or any person(s) to occupy any part of the common areas. As such, it was not entirely without legal justification for HD to set up its TMO at the site. However, in so doing, the Department might have restricted or hindered the owners' common ownership and use of the common areas.

4. The DMC also provided that OC approval was required for the Manager to use the common areas. At the initial stage, the OC had not yet been formed and HD was unable to find an appropriate alternative site for the TMO. As HD was aware that it might have contravened the DMC, it had considered relocating the TMO to its shopping arcade in the estate. However, the relocation plan was subsequently shelved as the Department planned to set up a regional office elsewhere to replace the TMOs in different estates.

5. Our investigation revealed that HD had not made proper forward planning. As a result, it had no choice but to occupy part of the common areas of the estate. Subsequently, it had also failed to relocate the TMO earlier. Moreover, after the OC was formed, the Department had failed to discuss promptly with the OC its continued occupation of the site. It had thus missed the chance to remedy the situation.

6. Nonetheless, the operation of the TMO was open knowledge. Being aware of its existence, the OC should not have allowed the occupation to persist for three years. The OC was, therefore, partly responsible.

7. Overall, this complaint was partially substantiated.

8. This Office recommended that HD issue an apology to the OC for having occupied the common area and make proper accommodation arrangements in future. HD accepted and implemented our recommendations.

9. We also suggested that the OC and HD seek legal advice and consider resolving their dispute through mediation.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/0788

HD – handling of application – delay in handling the complainant's application for a Green Form Certificate and failure to forewarn her so that she could not apply for a Home Assistance Loan in time – partially substantiated

The complainant had applied for public housing and was wait-listed. On 16 July 2003, she submitted an application to HD for a Green Form Certificate ("GFC"), with which she could apply for a Home Assistance Loan ("loan"). According to her, HD staff had told her that a GFC could be issued in a month or so and that the Department would stop allocating public housing to her upon receipt of her GFC application.

2. However, about a week after submitting her GFC application, she was allocated a public housing unit. Two days later, she called the HD office concerned to reject the allocation.

3. In early November, she received her GFC and a supplementary note that the number of loan applications had already exceeded the quota. Applications submitted in or after October would, therefore, be wait-listed. HD staff also told her that should her loan application fail, her GFC would become invalid and no GFC would be reissued. She, therefore, decided to wait and did not apply for a loan. On 26 November 2003, the Hong Kong Housing Authority ("HA") decided to stop accepting new loan applications immediately. The complainant felt aggrieved at losing the chance of securing a loan due to HD's delay in processing her GFC application and failure to forewarn her about over-application for loans or the impending discontinuation of the Loan Scheme.

4. HD explained that it normally would not accept rejection by telephone of public housing allocation. Moreover, it did not have any record of the complainant having called to reject the allocation. Recording of conversations also showed that HD staff had told the complainant that the GFC would be issued in two to three months rather than a month or so. On the other hand, HD's Lettings Unit had actually received the complainant's GFC application on 23 July, but failed to file it in time to stop the public housing allocation. As a result, more than two months had been taken to process the allocation and its rejection, before the GFC was finally issued on 29 October. The whole process had taken more than three months, slightly exceeding the verbal pledge made by HD staff.

5. An HD letter indicating over-application for loans was in fact attached to the GFC to notify applicants. Since such over-application had never occurred before, the HD staff concerned might not know the exact arrangements, in particular the fact that the applicant could seek to extend the GFC validity. There were also no details of such arrangements on the GFC for applicants' information. Otherwise, the complainant could have applied for loan without having to worry about possible invalidation of the GFC.

6. As regards the discontinuation of the Loan Scheme, that was a decision of HA on 26 November. HD could not have notified the complainant in advance.

Conclusion and Recommendations

7. Overall, this complaint was partially substantiated.

8. The Ombudsman recommended that HD:

(a) apologise to the complainant for the delay;

(b) streamline the procedures for processing GFC applications to obviate the need for first completing formalities relating to applicants' rejection of public housing allocation;

(c) review the procedures of the Lettings Unit to ensure expeditious handling of documents;

(d) pick out for priority processing those cases of rejection of public housing allocation where the allocatees have applied for GFCs; and

(e) explain clearly in the GFC the arrangements for extending its validity.

9. HD accepted recommendations (a), (b), (c) and (e), but considered that (d) might delay the processing of other rejection cases. As the number of priority cases under (d) was expected to be small and so too the problem envisaged by HD, The Ombudsman decided to keep (d).

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/3055

HD – tendering of shops – (a) delay in calling for tenders again for certain shop spaces when the successful tenderers did not execute the leases; and (b) lack of response to the complainant's enquiry – partially substantiated

The complainant tendered for lease of Shops A and B in a housing estate under HD in September 2002 and September 2003 respectively, but in vain. When the successful tenderers failed to execute the leases, HD did not call for tenders again until after more than six months. In May 2004, the complainant again failed in tendering for Shop C. As the shop was not opened after two months, he made enquiries with a Senior Housing Manager ("SHM") of HD, but did not get any reply.

Information provided by HD

2. Under HD's tender system, when a successful tenderer failed to execute the lease, the Department would not consider the other bids in the same tender exercise. Instead, it would call for tenders again later. The process would take about three months.

3. Shop A remained unleased after two tender exercises in September 2002 and January 2003, because of dishonoured cheques from the successful tenderers. The shop was finally leased out by open tender in March 2003.

4. The successful tenderer for Shop B, despite repeated reminders, failed to show up time and again between October and December 2003 for signing the lease. He further requested deferring the lease signing on various excuses. HD eventually had his tender deposit forfeited in late February 2004 and called for tenders again for the shop for a different trade in July 2004. However, the tender exercise was cancelled upon objection from a tenant.

5. As for Shop C, the successful tenderer was found to have breached lease conditions previously and was, therefore, disqualified. Tenders were invited again in late August 2004. The new shop was finally opened in October.

6. The SHM concerned had been transferred to another post shortly after the complainant's enquiry in July 2004, but he had briefed his successor Mr D about the enquiry. Mr D telephoned the complainant in early August 2004 and replied to his two written enquiries.

Observations

Complaint (a)

7. With regard to the problem of dishonoured cheques, this Office considered that HD should ask for tender deposits in the form of cashier's order or cash to eliminate this risk.

8. HD had not strictly enforced the provisions in the General Conditions of Tender ("the Conditions") and had allowed the successful tenderer for Shop B to delay signing the lease. It did not have his tender deposit forfeited until three months later.

9. Its cancellation of the new tender exercise in the face of objection from a tenant showed a lack of careful planning. As a result, the shop was left vacant for a prolonged period.

10. When the successful tenderer for Shop C was disqualified, HD should have awarded the tenderer to the next highest tenderer instead of calling for tenders again.

11. In view of the above, complaint (a) was substantiated.

Complaint (b)

12. The former SHM had briefed Mr D and the latter had responded to the complainant's enquiries verbally and in writing. Complaint (b) was, therefore, unsubstantiated.

Conclusion and Recommendations

13. Overall, this complaint was partially substantiated.

14. This Office recommended that HD:

(a) issue guidelines to staff for strict enforcement of the Conditions regarding forfeiture of tender deposits so as to deter deliberate delays in lease signing;

(b) accept only cashier's orders or cash for payment of tender deposits;

(c) examine the possibility of revising the Conditions to raise the percentage of the tender deposits that could be forfeited and hence, the cost to those who wilfully obstruct the letting of shops;

(d) consider awarding the tender to the next highest tenderer when the successful tenderer is disqualified or fails to take up the lease; and

(e) review the current procedures and revise the work flow to shorten the time for inviting tenders.

15. HD had reservations over recommendation (b), indicating that in normal tender exercises, to enclose cash with the tender document might give rise to disputes and security problems; to ask for cashier's orders would affect the cash flow of tenderers as the process would take time. Nevertheless, the Department would study the feasibility of accepting cashier's orders in instant tender exercises. This Office had no objection.

HOUSING DEPARTMENT ("HD") AND REGISTRATION AND ELECTORAL OFFICE ("REO")

Case Nos. OMB 2003/3252 - 3253

HD – personal data – (a) mishandling the complainant's personal data and providing inaccurate information to REO, rendering her unable to vote in the constituency of her residence in the District Council election – substantiated

REO – electoral records – (b) changing the complainant's constituency in the District Council election without prior notice; and (c) sending an address update notice to the wrong address provided by HD, such that the complainant did not realise her personal data had been changed – substantiated other than alleged

The complainant previously lived with her family in public housing in Kowloon. On marriage in 1999, she moved to the New Territories while her family moved to a Home Ownership Scheme ("HOS") flat in Kowloon. After informing HD to delete her name from the public housing tenants records, she also notified REO to update her residential address. In the 1999/2000 Legislative Council election, she voted in her geographical constituency in the New Territories. However, for the 2003 District Council election, REO changed her electoral address to her family's address at the HOS flat and assigned her to vote in a constituency in Kowloon.

Complaint (a)

2. At REO's request, HD provided to REO changes of particulars of public housing tenants and HOS occupants aged 18 and above each month. After deleting the complainant's name from the

public housing tenants records, HD staff failed to follow the established procedures of passing the photocopies of updated documents to the Home Ownership Centre for action. The Home Ownership Centre, therefore, could not update its records and sent the wrong information to REO, which then assumed the complainant had moved to the HOS flat and so changed her electoral address.

3. HD stressed that the staff concerned was just negligent and did not mean to misinform REO. On learning about the incident, HD deleted the complainant's name from the HOS records, reviewed the relevant procedures and adopted improvement measures.

4. This Office considered HD procedures for deleting the complainant's name from the public housing tenants records inadequate. It also failed to keep a clear record of the changes of particulars of tenants provided to REO each month and so could not check the records.

5. The Ombudsman, therefore, considered complaint (a) substantiated.

Complaints (b) and (c)

6. Upon receipt of the data from HD, REO would check against the electoral records. If an electoral address differed from that provided by HD and no notice of change of address had been received from the elector, REO would assume the address from HD to be the latest. Nevertheless, REO would send two updating of address notices respectively to the existing electoral address and the new address provided by HD before updating its records to ensure that the particulars were accurate and to remind the elector to advise REO of any change of residential address.

7. When the complainant informed REO of her change of address in 2000, REO immediately updated her electoral records. However, REO received HD's information in 2001 indicating that she had moved. REO then sent notices by surface mail to the complainant's addresses at HOS and in New Territories, stating that her electoral address had been changed to the HOS address and she could advise REO of any correction within one month. On receiving no response, REO assumed that the address provided by HD was correct.

8. Meanwhile, the complainant claimed that she had never received any updating of address notice from REO. She considered it improper for REO to change her constituency. On receiving the complaint, REO changed her electoral address back to her address in the New Territories in 2004.

9. As updating of address notices were not sent by registered mail and REO did not keep such records, we could not verify whether REO had really sent out notices. Even if REO had done so to both the new and old addresses, it was questionable whether REO should assume that the complainant actually received them, understood the contents and did not want to respond. We considered that REO should take the initiative to contact the complainant by telephone or other means (such as by fax) before updating her electoral address.

10. In this light, The Ombudsman considered complaints (b) and (c) unsubstantiated. However,

there was maladministration other than that alleged on the part of REO as it had failed to take the initiative to verify the complainant's address.

Conclusion and Recommendations

11. Overall, this case was partially substantiated.

12. To prevent recurrence of similar incidents, The Ombudsman recommended that:

HD

(a) send a written apology to the complainant;

(b) review the existing procedures and implement improvement measures as soon as possible, and consider revising departmental instructions to remind frontline staff to check whether tenants have their names in the HOS records when deleting them from the public housing tenants records, and to inform the Home Ownership Centre promptly within a specified period for follow-up action; and

(c) consider making electronic copies for easy checking when providing changes of particulars of tenants to REO.

REO

(d) review the existing procedures for updating the electoral records and consider revising the content of the updating of address notice. After sending out the notice, unless there was a written confirmation from the elector, REO should not change any elector's personal data (including the electoral address);

(e) study the scope of relevant legislation and consider approaching more public organisations for personal data of electors (especially those living in private buildings) for verification of electoral records. This should avoid any misunderstanding that public housing tenants and HOS occupants were given different treatment; and

(f) enhance publicity programmes, promote the civic awareness of voting in elections, stress that it is the responsibility of electors to update their personal data to ensure accuracy of information in the electoral register, and remind electors that it is an offence to vote in a constituency not corresponding to one's residential address.

13. HD accepted all our recommendations and issued a written apology to the complainant. Meanwhile, it had issued new departmental instructions on the proper procedures for handling deletion of names from the public housing tenants records. HD would also make and keep electronic copies for five years when providing changes of particulars of tenants to REO.

14. REO accepted all our recommendations and revised the content of the updating of address notice. It also undertook to step up publicity at some appropriate time on the importance of updating personal data and to study the possibility of approaching more public organisations for personal data of electors.

LANDS DEPARTMENT ("Lands D")

Case No. OMB 2004/1938

Lands D – handling of application – delay and impropriety in handling the complainant's application for building two New Territories Exempted Houses – substantiated

The complainant was the owner of two lots A and B. In November 1996, he applied to the local District Lands Office ("DLO") under Lands D for approval to build two New Territories Exempted Houses ("NTEHs"). Besides providing DLO with further information, he had inspected the lots with DLO staff and engaged a professional surveyor to set out their boundaries. Despite these efforts and numerous verbal and written reminders, DLO still could not reach a decision by May 2004. The complainant was dissatisfied with the delay.

2. The Land Registry did not have any record that Lot A had a "house" status. The complainant provided documents in December 1997, indicating that Lot A included 0.02 acre of "house" land. He inspected the site again with DLO staff and submitted a proposed layout plan in September 1998.

3. As the proposed NTEHs were both to be within Lot A, it was necessary to transfer 390 square feet of "house" land from Lot B to meet the shortfall. However, under current Lands D policy, the gross floor area of a building lot was not transferable to another. After seeking legal advice, DLO informed the complainant in October 1999 that his proposal would be unacceptable if it was ascertained that the house land on Lot A was only 0.02 acre.

4. In March 2000, on DLO's request, the complainant again submitted a sketch of his proposal. In April, DLO sought legal advice on the development conditions of Lot B, but these could not be ascertained as neither the relevant file nor the land grant conditions of Lot B was available.

5. DLO informed the complainant in December 2002 that his application could not be processed further because the policy did not allow the land exchange and there was local objection to his proposal. DLO later undertook to look into the local objection and keep him informed.

6. In March 2004, the complainant wrote to DLO to complain about slow progress. DLO then found the main case file missing. It had, therefore, to reconstruct the file and failed to ascertain whether the assistance of the District Office ("DO") had ever been enlisted to resolve the local objection according to the normal procedures.

7. Lands D had advised that if the complainant intended to build both NTEHs on Lot A, he ought to apply for a land exchange by surrendering his two lots to Government for re-grant of a new lot.

Observations and Opinions

8. There were obviously delays in DLO's handling of the case. It had waited one year before asking the complainant for evidence on the land status of Lot A and another one-and-a-half years

before seeking legal advice. No significant action had been taken from July 1999 to February 2000 and from May 2000 to December 2002 when it advised the complainant that his application could not be processed further. Six years had elapsed by then.

9. DLO had handled the application in a haphazard manner. It sought legal advice regarding Lot A in July 1999 and then Lot B in April 2000. Had it done so in one go, much time and resources could have been saved.

10. Its loss of the case file also constituted maladministration. Furthermore, DO had no record of having been asked to help resolve the local objection. It would appear, therefore, that DLO had not followed the normal procedures in this case.

Conclusion

11. The Ombudsman, therefore, considered this complaint substantiated.

12. Lands D accepted our recommendations as follows:

(a) to apologise to the complainant;

(b) to expedite the processing of the complainant's case; and

(c) to remind staff to process similar applications carefully and efficiently according to established procedures and of the importance of safe-keeping of files and records.

LANDS DEPARTMENT ("Lands D") AND TRANSPORT DEPARTMENT ("TD")

Case Nos. OMB 2004/0022; OMB 2004/0964

Lands D – land use – leaving a car park site idle – partially substantiated

TD – provision of car park – failing to open the car park to meet public demand – unsubstantiated

The complainant alleged that due to a dispute over land ownership between Government and a group of indigenous villagers, a car park had been left idle for months since its completion in July 2003. He considered that Lands D and TD should have clarified the land ownership before constructing the car park.

2. The car park was, in fact, meant for local villagers and their visitors. Although the Lands Administration Office Instruction ("Instruction") of Lands D provided that it be metered and managed by TD, the villagers strongly objected and applied for a Short Term Tenancy ("STT") of the site at nominal rent instead. Lands D's counter-proposal of an STT at full market rent was endorsed by the District Lands Conference and TD.

3. Lands D had explored the possibility of opening the car park to the public while processing the STT application. However, on the District Office's advice about the villagers' likely reaction, Lands D shelved the idea. To reduce the idling time of the car park, it urged the villagers in June 2004 to form a legal body within three months to manage the car park as lessee of the STT.

4. TD expressed willingness to manage the car park in the interim, but when consulted by Lands D, it showed concern over the possible adverse public reaction when the car park was closed again in future for the villagers' exclusive use under the STT.

Observations and Opinions

5. We found that as the car park was built on Government land, the complainant's allegation of a dispute over the land ownership was unfounded. Nevertheless, the fact that the car park had been left idle since mid-2003 was an open reminder of Government inefficiency in planning and coordination.

6. The villagers' formation of a legal body and Lands D's assessment of market rental for the STT took time. Lands D should have been aware of this and sought TD's cooperation in opening the car park to the public in the interim. It should also have processed the small house applications within the area more efficiently to enable the villagers to move in earlier and use the car park.

7. TD had the capacity to manage the car park and should, therefore, have been more positive over opening it to the public in the interim.

8. Of the two departments, Lands D was the more culpable as it is the Lands Authority and should not have tolerated the idling of the site for so long.

Conclusion and Recommendations

9. The Ombudsman, therefore, considered the complaint against Lands D partially substantiated and that against TD unsubstantiated.

10. The Ombudsman recommended that Lands D:

(a) revise the Instruction to permit greater flexibility in the management of car park, e.g. STT and interim public car parks;

(b) urge the villagers to expedite formation of a legal body for the STT;

(c) prescribe the commencement date of the STT as soon as the processing of small house applications was completed; and

(d) pending operation of the STT, open the car park for public use.

11. The Ombudsman also recommended that TD manage the car park for public use in the interim.

12. As negotiation on the STT terms were in progress and most villagers had accepted the small house grants, The Ombudsman withdrew her recommendations in paragraphs 10 (d) and 11.

LANDS DEPARTMENT ("Lands D"), TREASURY ("Try") AND RATING AND VALUATION DEPARTMENT ("RVD")

Case Nos. OMB 2003/4265; OMB 2004/2575;
OMB 2004/3347

Lands D and RVD – Government rent – failing to revise Government rent upon redevelopment of a land lot and being unfair to the current owners in asking them to pay the rent arrears that should have been paid by the former owners – substantiated

Try – same – unsubstantiated

The Owners' Corporation of Building A complained that the land lot where Building A was situated ("the Lot") had undergone two redevelopments in 1978 and 1993, but RVD and Try had not accordingly revised the Government rent then. In 2003, Lands D retrospectively revised the rent and asked the current owners to pay the arrears since September 1978. The complainant considered this unfair to the current owners as part of the arrears should have been paid by the former owners.

2. The lease of the original lot, which included the Lot, had been "renewed" by Government in May 1973 through granting a new lease. Subsequently, the Lot was excised from the original lot in 1977. According to Land Office Circular Memorandum No. 41 ("the Memorandum"), the rent for the Lot as of 1 July 1973 should be the amount specified under the renewed lease (i.e. $82,840 a year) or an amount equal to 3% of the rateable value of the Lot, whichever is the lower. Because of the low rateable value of the Lot at that time, the rent was set at $536 per annum only.

3. In 1978, the Lot underwent its first redevelopment and the rent should have been adjusted to $8,280 yearly. However, Try continued to charge the then owners $536 a year. When the Lot was again redeveloped in 1993 into Building A, the rent should have been revised to $82,840 a year. However, Try still charged the owners $536.

4. In June 2002, RVD discovered the problem. It thus informed Lands D, which had since April 2002 assumed responsibility for collecting Government rent. In July 2003, Lands D sent a demand note to the owners of Building A for payment of rent arrears since September 1978, totalling about $868,420.

5. Before 2002, RVD had mistaken the lease of the Lot as being newly granted and was not aware that the Memorandum applied. Consequently, when the Lot twice underwent redevelopment, RVD did not follow Government instructions to notify Try of the new rateable value. Try thus did not demand a new rent based on the new valuation.

6. Lands D had a duty to notify RVD of new buildings for assessing their rateable value. However, it did not alert RVD in 1993 of the need to reassess the newly constructed Building A. Notwithstanding this, Lands D considered it its right and duty to recover any rent arrears.

Observations and Conclusion

7. There was maladministration on the part of Lands D and RVD, as neither had followed the established procedures applicable to the Lot. The complaint against the two departments was, therefore, substantiated.

8. Though Try was formerly responsible for collecting Government rent from owners on behalf of Lands D, it had not been notified by RVD of the new rateable value of the Lot and, therefore, was not aware of the need to revise the rent. Hence, the complaint against Try was unsubstantiated.

9. Overall, this complaint was partially substantiated.

Recommendations

10. Whether the current owners of Building A were liable for the rent arrears involved interpretation of the lease conditions and legal opinion, so this Office would not comment. The complainant should seek legal advice to clarify its legal responsibility.

11. The Ombudsman recommended that:

(a) Lands D step up publicity to remind prospective buyers to check before acquiring a property whether there was Government rent in arrears; and

(b) Lands D and RVD revise their departmental guidelines to set out clearly the division of duties and the procedures for the assessment of Government rent for new buildings.

12. The recommendations were accepted and implemented.

LEGAL AID DEPARTMENT (“LAD”)

Case No. OMB 2004/0995

LAD – legal aid application – staff negligence in failing to send letters to the complainant’s correspondence address – substantiated

The complainant had applied to LAD for legal aid for her divorce case. To prevent her husband from learning of her application, the complainant gave her elder brother’s address (“Address C1”) as her “correspondence address” and entered her current residential address with her husband (“Address R”) in the “residential address” column of the application form.

2. Later, the complainant wrote to LAD to change her correspondence address to Address C2. She further telephoned the Department to confirm receipt of her letter. About a month later, she enquired with the Department on the progress of her application and was informed that a letter had been issued rejecting her application. However, she did not receive that letter and so asked the staff

to send it to her again. Subsequently, she discovered that the letter had been sent to Address R. She telephoned to query the Department for failing to send the letter to Address C2. Nevertheless, the staff replied that it did not matter as her husband would sooner or later know.

Response from LAD

3. LAD explained that in general, an applicant for legal aid would be required to fill out an application form. Its staff would make a photocopy of the front page of the completed form for inputting the applicant's personal particulars into the computer. Meanwhile, the original form would be given to a law clerk for taking the applicant's statement.

4. When the complainant submitted her application form, she had provided only the residential address shared with her husband ("Address R"). LAD staff photocopied the front page and input her personal particulars and Address R into the computer and the original was passed to a law clerk for her statement. While making the statement, the complainant offered her elder brother's address ("Address C1") as her "correspondence address".

5. The law clerk stated that when the complainant gave Address C1 as her "correspondence address" in the application form, he immediately photocopied the front page again and passed it to a colleague for follow-up action. However, there were two staff members present that day and he could not recall to whom he had given the information. The staff on duty that day also could not remember.

6. According to LAD records, the complainant had indeed provided different correspondence addresses but the Department had failed to update its records. When the complainant telephoned to enquire about progress, it then realised the omission. There and then, staff input the new address into the computer and sent the rejection letter to Address C2.

7. As for the allegation against the staff who answered her query, LAD believed that it could have been due to some misunderstanding in communication. The staff concerned was only trying to explain the legal proceedings and not commenting on her application. In this connection, the Department apologised to the complainant for any distress caused.

Observations and Comments

8. The law clerk was negligent in failing to ensure that the complainant's correspondence address was input into the computer. Although he claimed to have passed the data to colleague, he could not identify the staff concerned. This Office, therefore, could not accept his defence. It was obviously due to the negligence of LAD staff that the Department had repeatedly failed to update the complainant's correspondence address.

9. As for the complainant's allegation against the staff who answered her query, this Office accepted the Department's explanation.

Conclusion and Recommendation

10. The Ombudsman considered this complaint substantiated.

11. The Director of Legal Aid accepted our recommendation to issue a written apology to the complainant.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2003/3067

LCSD – enforcement action – misuse of authority and perfunctory conduct of subsequent investigation – partially substantiated

The complainant and his family went to a park to celebrate the Mid-Autumn Festival. They lit some candles in a moon-cake container for about half an hour. An LCSD special patrol team came and gave them a verbal warning against burning wax. A row then ensued and the LCSD staff called the police for assistance. When the complainant and his family were leaving the park, two team members followed them. Suddenly, allegedly one of the team members lay on the ground, claiming to have been assaulted and injured. The police arrived and tried to mediate. The team leader asked the team member who claimed to have been injured not to pursue the case and the police let the complainant and his family go.

2. Alleging that the staff concerned had misused their authority, the complainant filed a complaint to the Home Affairs Bureau, a Legislative Councillor, a radio programme and LCSD, copying his letter to this Office. On completion of its investigation, LCSD sent a written reply to the complainant but he was not satisfied. He considered that the Department had handled his complaint perfunctorily without an in-depth investigation. He, therefore, lodged a complaint with this Office.

Response from LCSD

3. LCSD explained that during the Mid-Autumn Festival, special patrol teams were deployed in various districts to step up enforcement action in its parks and urge people to refrain from "wax burning" to ensure a safe and clean environment and to prevent injuries to visitors and damage to public property.

4. On the evening of the incident, a patrol team found the complainant and his family burning some ten candles in a metal tin, some of them having melted. To prevent an accident, the team leader advised the complainant to dispose of the molten wax in the tin. He had no intention to press charges. The complainant resisted the advice, was uncooperative and suggested the team to call the police, which the team leader did. The complainant and his family then quickly packed up and left the scene. Two team members followed them and asked them to wait for the police. However, the complainant refused to comply. The team leader ordered his staff to stop following them but they

failed to get the instruction. They then collided with the complainant and his wife and one of the team members fell and was injured. As the team member only had a minor scratch, with his consent and through mediation by the police, both parties agreed to settle the dispute and the complainant would not be charged.

5. The complainant subsequently lodged a complaint with LCSD demanding an apology from the injured team member and a statement from the team leader that the injury had nothing to do with his wife. After an investigation, the Department considered that both parties had already agreed not to pursue the case in the presence of the police. Meanwhile, there was no justification for the staff to extend an apology to the complainant or make the above statement.

6. LCSD indicated that it had issued guidelines to staff on the proper procedures to handle and report any staff casualties in the course of duty. As the team leader thought the member only had a minor injury, he had chosen not to report it in accordance with the guidelines. Nevertheless, to prevent recurrence of similar incidents, the Department had stepped up its instructions to its staff, urging them to remain calm and restrained in their enforcement action to avoid any confrontation. It would also brief its staff and issue relevant guidelines on the appropriate ways to handle difficult offenders and confrontational situations.

Observations and Opinions

7. This Office considered that LCSD staff had believed, on the basis of their professional knowledge and experience, the complainant's act might be hazardous and advised him accordingly. The complainant should have accepted the advice and stopped burning wax. All citizens should obey the law and cooperate with law enforcement officers.

8. In our view, LCSD staff had acted too hastily in calling the police for assistance when challenged by the complainant. When the team leader tried to persuade the complainant to wait for the police but to no avail, he ordered his staff not to follow the complainant. However, some members failed to get the instruction in time and they continued their pursuit. This Office queried whether it was necessary for the patrol team to adopt such actions. Meanwhile, the team also showed a lack of coordination.

9. This Office believed that the team leader had meant well in deciding not to pursue the case. However, we doubted whether that was appropriate. We considered that when one of his team members claimed to be injured, the team leader should have sent him to hospital for treatment immediately while anyone suspected of assault should be handed over to the police.

Conclusion and Recommendations

10. Although LCSD staff had not misused their authority, there was clearly inadequacy in handling the incident. Moreover, the team leader had failed to report to the Department the staff injury in the course of duty in accordance with administrative circular. He was, therefore, suspected of dereliction of duty.

11. As LCSD had conducted an investigation upon receipt of the enquiries and complaint and explained the result of the investigation to the complainant, the Department had not handled the complaint perfunctorily.

12. Overall, the complaint was partially substantiated.

13. This Office recommended that LCSD:

(a) issue a circular as soon as possible directing its supervisory staff/officers-in-charge to provide appropriate medical assistance to any staff who was assaulted and sustained injury while on duty; and send the staff to hospital for treatment when necessary or at the staff's request. The supervisory staff/officers-in-charge should report any accidents to the Department in accordance with the relevant administrative circular;

(b) review its existing guidelines to improve staff communication and coordination in enforcement actions, increase their efficiency and draw up criteria for and detailed notes on issuing "verbal advice/warning" or instituting prosecution against offenders;

(c) enhance its existing training programmes to allow its staff to learn the proper law enforcement procedures and knowledge; and

(d) consider follow-up action regarding the team leader's failure to report the staff injury in the course of duty.

14. LCSD accepted and implemented all our recommendations.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2004/1928

LCSD – library services – unreasonable regulations on overdue fines for library materials borrowed – unsubstantiated

The complainant borrowed two books and three accompanying CD-ROMs from a LCSD public library and returned them four days after the due date. He believed that he would need to pay a fine of $12 only since the overdue fine was $1.5 per book per day. However, the library staff asked him to pay $30 since the three CD-ROMs attracted fines as well.

2. The complainant considered it unreasonable to treat the books and their accompanying CD-ROMs as separate items, because readers were only allowed to borrow a maximum of six items at any one time. Should an item contain accompanying CD-ROMs and the borrower take six items with some containing CD-ROMs, this would then exceed the prescribed limit.

3. According to LCSD, the leaflet entitled "Library Materials Lending Services" ("the Lending

Services leaflet") published by public libraries stated that readers could borrow a maximum of six items of library materials. Accompanying library materials would not be counted as a lending item. In the case of the complainant, the two books and three accompanying CD-ROMs would count only as two items on loan.

4. Nevertheless, to prevent readers from returning only the main items but delaying the return of accompanying materials or even not returning them, an overdue fine would also be charged on each accompanying library material as of 15 March 2003. For materials borrowed from the adult lending library, the overdue fine is $1.5 per item per day as stated in the Lending Services leaflet that "the penalty applies to all library materials including books... CD-ROMs and accompanying library materials". Consequently, the complainant had to pay the fines for the two books and the three accompanying CD-ROMs.

5. The librarian concerned indicated that the complainant had admitted to having received a leaflet about the new regulations on overdue fines. When he borrowed the accompanying materials, the library staff had also so informed him. However, the complainant denied having received the leaflet or being forewarned. In the absence of independent evidence, this Office could not ascertain if he was aware how overdue fines would be calculated.

6. On the other hand, although the Lending Services leaflet did not explain clearly that accompanying library materials were not included in the maximum number of lending items, the method of calculation of overdue fines was explicitly set out in the leaflet and the LCSD website. It was, therefore, reasonable for LCSD to demand payment of an overdue fine for the accompanying materials. As a matter of fact, a fine for such materials would not only serve to remind readers to return them on time but also foster a responsible attitude towards borrowed materials.

7. In this light, The Ombudsman considered this complaint unsubstantiated.

8. To avoid misunderstanding, LCSD had since amended the Lending Services leaflet to state clearly that each reader could borrow a maximum of six items of library materials plus their accompanying materials.

OFFICIAL RECEIVER'S OFFICE ("ORO")

Case No. OMB 2004/1177

ORO – handling of offence report – failing to take timely action on the complainant's report against a bankrupt dishonestly borrowing money from him – substantiated

In late 2002, the complainant reported to ORO that Madam A had borrowed some tens of thousands of dollars from him without disclosing her bankrupt status.

2. The complainant then telephoned Case Officer A of ORO many times for progress of investigation. However, each time the reply was "due to manpower shortage and heavy workload, the case was still being processed" or such like.

3. When the complainant called again in March 2004 to enquire about progress, Case Officer B advised that Case Officer A had retired and Madam A had discharged from bankruptcy. He was also advised to make a fresh bankruptcy petition against Madam A if he wanted to continue his claim for the debt.

Observations and Opinions

4. ORO admitted that Case Officer A had retired and that the case file did not contain any record of his investigation. Consequently, the details of the investigation could not be ascertained. This Office believed that Case Officer A had not conducted any thorough investigation.

5. Case Officer A was also found to have failed to follow ORO's established guidelines and procedures to issue an interim reply to the complainant within ten days or to record progress of investigation. Furthermore, he had not formally addressed the complainant in writing on findings from the investigation. He had not passed the case to the Prosecutions Section lawyers to consider whether to prosecute or briefed his successor on the case before his retirement. It was, therefore, not known whether the investigation had been completed. These features obviously constituted gross maladministration.

6. ORO had no effective monitoring system for handling and overseeing reports of offence. Its internal guidelines were unclear and unable to ensure that all such reports were properly followed up and investigated. This case showed up the deficiencies of the procedures. Even when an informant was dissatisfied with the case officer's decision and requested a review of a case, there was no system in place in ORO to alert the case officer's supervisor and/or other senior staff.

7. ORO had procedures for handling general "complaints" (including objection by the informant to the decisions of a case officer) and for senior officers' checking of the outcome of investigation into complaints. However, if an informant did not know of such procedures and merely expressed dissatisfaction over the findings of an investigation without specifically lodging "a complaint", then ORO might not handle the case according to its "complaint handling procedures".

8. The weaknesses identified in this case were reflected also in another complaint against ORO then under investigation. In that other case, an ORO case officer failed repeatedly to respond to the numerous written enquiries from the complainant, without his supervisors being aware at all. This underlined the inadequacies in ORO's monitoring mechanism.

Conclusion

9. The complaint was substantiated.

Recommendations

10. This Office recommended that the Official Receiver:

(a) formulate guidelines on the classification of “no further action” cases;

(b) draw up guidelines on the supervision of reports and the ways to avoid possible time-barred prosecutions resulting from its staff’s faults; and

(c) remind case officers from time to time to adhere to established guidelines when following up reports and to keep proper records.

SOCIAL WELFARE DEPARTMENT (“SWD”)

Case No. OMB 2004/2042

SWD – handling of fraud report – (a) failing to follow up properly a report of fraudulent rental allowance claims; and (b) poor staff attitude – unsubstantiated

The complainant let her flat to Mr A, who stopped paying rents after eight months. The complainant applied to the Lands Tribunal to recover the rents and won the case. To assist SWD to investigate whether Mr A had made fraudulent claims for rental allowance, she submitted a photocopy of the tenancy agreement. She also requested SWD to give Mr A’s rental allowance to her to cover the outstanding rents, which SWD refused. She, therefore, complained against SWD for failing to take action on her report and continuing to grant to Mr A the rental allowance.

Complaint (a)

2. Upon receipt of the complainant’s report, SWD’s Social Security Field Unit referred the case to the Department’s Fraud Investigation Team (“FIT”) for further action. Before the fraud was substantiated, SWD had to continue paying Mr A the rental allowance.

3. This Office found that SWD had taken prompt action to refer the case to FIT for action. It was also reasonable for SWD staff to have refused to divulge details of the investigation to the complainant because of privacy concern. As regards the recovery of the outstanding rents, that was a civil dispute between the landlord (the complainant) and the tenant (Mr A). SWD had rightly not intervened. The complainant should recover the rents through civil proceedings, certainly not through SWD’s transfer of Mr A’s rental allowance to her.

4. The Ombudsman, therefore, considered complaint (a) unsubstantiated.

Complaint (b)

5. The complainant alleged the attitude of SWD staff to be poor, having kept her waiting in their office for hours. The staff claimed that they had called her name but she had not responded.

6. Though there was no independent evidence to prove that SWD staff had called the complainant, this Office considered it fair and reasonable for them to finish all their appointments first before receiving the complainant who had not made any appointment. There was also insufficient evidence about their attitude. Complaint (b) was, therefore, unsubstantiated.

Conclusion and Recommendations

7. Overall, this case was unsubstantiated.

8. The Ombudsman recommended that SWD remind its frontline staff to be courteous to the public and avoid an antagonistic attitude.

SOCIAL WELFARE DEPARTMENT ("SWD") AND HOUSING DEPARTMENT ("HD")

Case Nos. OMB 2004/2661 - 2662

SWD – timely information to client – (a) staff failure to keep promise to alert complainant before HD's recovery of his public housing unit – unsubstantiated

HD – recovery of public housing unit – (b) staff abuse of authority, removing or taking possession of property in complainant's unit – partially substantiated

The complainant and his family used to live in a public housing unit ("unit"). In March 2004, they moved out without informing HD and rented a private flat. The complainant's wife was then hospitalised and later referred to an Integrated Family Service Centre under SWD ("the Centre"). Her case was taken up by Officer A.

2. The complainant alleged that Officer A had told his wife that before recovering his unit, HD would write to SWD about his situation and that Officer A would then alert him.

3. In June 2004, the complainant learned that HD had thrown away his belongings in the unit except for several electrical appliances awaiting auction to offset the rent in arrears. The complainant alleged that HD staff had removed or taken possession of some valuable items and personal documents in the unit. He also complained that Officer A had failed to keep her word to alert him before recovery of the unit.

Complaint (a)

4. With the Centre's help, the complainant applied for Comprehensive Social Security Assistance ("CSSA"), including rent allowance, and succeeded in May 2004. However, the complainant used the allowance to pay for the rent of his private flat instead. HD was, therefore, not aware that the

complainant was receiving rent allowance from SWD and so would not approach SWD in connection with his non-payment of rent for the unit.

5. Officer A also stated that she had only answered his wife's enquiry on the possible consequences of such non-payment of rent, but had not promised to alert the complainant of HD's recovery of his unit.

6. Furthermore, the complainant had not requested or authorised SWD to liaise with HD on matters relating to the unit. In other words, HD could not have informed SWD or the complainant of its recovery of the unit.

7. This Office could not think of any reason why Officer A should have made the alleged promise. Indeed, the complainant had not fulfilled his obligation to pay rent to HD and to inform it of his moving-out. He had only himself to blame for HD's recovery of the unit without his knowledge.

8. Complaint (a), therefore, was unsubstantiated.

Complaint (b)

9. As rent for the unit had remained outstanding since March 2004, HD issued a Notice of Eviction stating that the tenancy would be terminated on 31 May 2004.

10. On 24 June 2004, after the appeal period had expired, HD's estate office took action to recover the unit.

11. HD claimed that under the Housing Ordinance and the departmental Financial Instructions, HD was empowered to keep valuables such as cash, gold and jewellery found in the course of clearance. A notice should be posted at the front door of the unit, allowing the owner to claim them within seven days. In the absence of claim, the property would be auctioned and the proceeds used to offset the rent in arrears.

12. On the day of recovery, the three Housing Officers ("HOs") present did not find any cash or other valuables except four electrical appliances. They recorded and photographed the appliances. A notice was posted at the front door. They then instructed workers to put the items away in the estate's storeroom. For sanitary considerations, they further directed the workers to dispose of other items in the unit.

13. This Office noted that one of the three HOs had acted as witness. We considered such an arrangement reasonable and sufficient to eliminate the possibility of any property items being disposed of indiscriminately or stolen.

14. The HOs had also followed the departmental instructions in checking for the presence of cash or other valuables before they instructed and supervised the workers to remove the electrical appliances and dispose of useless items. There was no impropriety on the part of the staff concerned.

15. Nevertheless, this Office noted that while section 24(2) of the Housing Ordinance empowers HD to keep any property found and allow the owner to claim any such items within seven days, there was no distinction between "valuables" or "non-valuables". In other words, HD had contravened the Housing Ordinance when it disposed of the complainant's "non-valuables" without allowing him seven days to claim them.

16. We had also examined HD's Financial Instructions and found that they were not clear with regard to the recording and storing of "non-valuables" and their return to the owner when claimed. We believed that the staff concerned had disposed of the complainant's "non-valuables" immediately because of the inadequate guidelines.

17. As regards the complainant's allegation of HD staff having taken possession of his valuables, this amounted to a criminal charge. We, therefore, did not comment.

18. Since HD had disposed of the complainant's "non-valuables" inappropriately, complaint (b) was partially substantiated.

Conclusion and Recommendation

19. Overall, this complaint was partially substantiated.

20. This Office was pleased to note that HD had in September 2004 issued new guidelines to its staff to explain clearly the procedures. However, we considered that HD should review the legality of its new guidelines on immediate disposal of "perishable" goods.

21. HD undertook to do so.

TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY ("TELA")

Case Nos. OMB 2004/2582

TELA – complaint handling – delay in processing a complaint and in replying – substantiated

The complainant lodged a telephone complaint with TELA, the executive arm of the Broadcasting Authority ("BA"), in late March 2004 about certain errors made by the host in an episode of a television quiz in late February 2004. TELA sent him an interim reply on 20 April, followed by a substantive reply on 4 June stating that the matter was outside BA's jurisdiction. The complainant was dissatisfied that TELA should have taken so long to reach such a conclusion.

2. TELA claimed that it had met its performance pledge by issuing the interim reply within 15 working days. However, as the complaint appeared to be outside BA's remit, TELA had accorded it low priority in view of its reduced staff strength and increased workload. That was why it had taken 53 working days to inform the complainant.

3. We noted that whilst TELA's interim reply indicated that investigation into the complaint had begun, no investigative action had actually been taken. The absence of accurate details in the interim reply also raised questions on whether it could be considered a "substantive response to complainant on progress or results of investigation" which, according to TELA's performance pledge, should be issued within 15 working days. The substantive reply issued on 4 June far exceeded the target of 15 working days.

4. Besides, it should have been obvious to TELA staff at the outset that the complaint was outside BA's remit. Taking 53 working days just to confirm this fact and inform the complainant was unduly long by any standard.

5. Our investigation also revealed that TELA had reviewed a wrong episode of the quiz though the data provided by the complainant through us were basically correct. This illustrated that TELA staff had handled the complaint and our inquiry in a lax manner.

6. The Ombudsman considered this complaint substantiated.

7. TELA accepted our recommendations as follows:

(a) apologise to the complainant;

(b) remind staff to give accurate information in letters to the public;

(c) set separate target response time for "progress of investigation" and "results of investigation" in its performance pledge;

(d) introduce a mechanism to screen out at an early stage complaints clearly outside BA's remit; and

(e) set a shorter target response time for concluding such complaints.

TRANSPORT DEPARTMENT ("TD") AND HOME AFFAIRS DEPARTMENT ("HAD")

Case Nos. OMB 2003/4239; OMB 2004/0059

TD – ferry service licensing – failing to invite public tender for a new "kaito" ferry service licence – partially substantiated

HAD – public consultation – inadequate public consultation on the new service – unsubstantiated

The complainant was the licence holder for a "kaito" ferry service for an outlying island. In October 2003, he found that TD had issued to a company another licence for a new route between the island and the urban area. He alleged that the departments concerned had not conducted any public consultation or public tender. He also criticised TD for unfair treatment because the new service operated only on weekends and public holidays while he was required to serve a small clientele on weekdays as well.

Complaint (a)

2. Section 28(6) of the Ferry Services Ordinance provides that if it appears that two or more persons are likely to apply for a licence, the Commissioner for Transport shall arrange public tender. However, TD explained that very few people were interested in operating "kaito" ferry services because public demand was not high. Hence, the Department had been rather accommodating in processing applications for such licences and all had been issued without public tender.

3. This Office considered TD too arbitrary in deciding that no one else was interested to apply for the new licence and in thus waiving the public tender requirement. Indeed, TD itself had noticed an increase in demand from tourists for ferry service to the island. It should not have ignored the possibility of other parties being interested. Regarding the allegation that TD required the complainant to operate on both weekdays and pubic holidays while allowing the new service to operate on weekends and public holidays only, it would not be unfair if TD had given the complainant an equal opportunity to bid for the new service through public tender.

4. This Office noted that TD had all along adhered to departmental instructions drawn up in the early 1980s. Nevertheless, the instructions did not mention how to ascertain the need for public tender and how to conduct public consultation. The instructions were obviously outdated.

5. Complaint (a) was, therefore, partially substantiated.

Complaint (b)

6. TD had conducted public consultation through HAD, but had not informed the latter that the new ferry service was meant for tourists. HAD, therefore, had focussed on residents of the island,

and consulted their representatives verbally, instead of presenting the case to the District Council. The residents' representatives, however, failed to inform the complainant, himself a resident.

7. The inadequate public consultation was due to the lack of clarity in TD's instructions to HAD. Complaint (b) against HAD was, therefore, unsubstantiated.

Conclusion and Recommendations

8. Overall, the complaint was partially substantiated.

9. The Ombudsman recommended that TD review and revise as soon as possible its departmental instructions on the public tender requirement and procedures for public consultation. She also recommended that HAD remind staff to be careful about the objectives and scope of consultation when receiving requests for public consultation from other departments.

10. Both departments accepted our conclusion and recommendations.

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2004/1549

WSD – demand for repair cost – failing to reply to written enquiry – substantiated

In December 1998, the complainant, a Government contractor of a District Office ("DO") under the Home Affairs Department, was carrying out drainage improvement works in the vicinity of a damaged water main. WSD suspected the damage to have been caused by the complainant. In March 2000, WSD issued a preliminary demand note to the complainant for repair cost estimated at $20,000. In April, the complainant wrote to WSD denying liability. WSD sought information from DO in May and was advised in June that DO had no record of the complainant having any site activity on the day of damage. Since then, WSD had taken no action to investigate the matter other than an instruction from the engineer concerned for a fresh set of undertaking form to be prepared for demanding payment.

2. Two years later, i.e. May 2002, WSD worked out the actual repair cost to be $23,886.30. Its Expenditure Section was then instructed to demand payment from the complainant. However, by omission attributed by WSD to the absence of a computer routine to alert the staff, no supplementary demand note was issued. Another two years later, WSD discovered this case and issued a demand note to the complainant on 2 April 2004.

3. On 16 April 2004, the complainant wrote to WSD objecting to the demand and requesting a reply. As there was no response from WSD up to 9 May, the complainant lodged a complaint with The Ombudsman.

4. On 21 June, WSD replied to the complainant that it was still considering the case and apologised for the delay in replying. On 30 June, WSD informed the complainant that the demand note had been cancelled after thorough investigation of the matter.

5. WSD admitted the delay in replying but attributed this to a misunderstanding between its Expenditure Section and Regional Staff.

6. The Ombudsman, therefore, found the complaint substantiated.

7. In addition, we observed that WSD had handled this case over an unacceptably long period of almost six years, with one omission or delay after another. We found not only that WSD was remiss in all the delays and omissions identified but that the attitude of its staff towards such matters surprisingly cavalier.

8. We recommended WSD to review its procedures and formulate a system for monitoring timely issue of demand notes.

9. In response, WSD expressed strong reservations on our observations. It contended that the time needed to process a case would depend on complexity of the case and work priorities at the time. Besides, the omission to issue the supplementary demand note was mainly due to limitation of the computer system.

10. As WSD had admitted delays, we did not accept its view that the delays had been mainly due to computer limitations. The Ombudsman considered our observations to be based on facts and saw no ground to alter them.

Panel of Professional Advisers

Advisers

Mr Brian G. BAILLIE

Mr Francis Shu-ying BONG

Mrs Anne R. CARVER

Professor Johannes M.M. CHAN

Professor T.K. CHAN

Mr Gary Chung-keung CHANG

Mr Yan-kee CHENG

Mr Joseph Ming-kuen CHOW

Professor M.J.A. COORAY

Dr Raymond Chung-tai HO

Professor P.C. HO

Mr Anson Kam-choy KAN

Professor Kar-neng LAI

Mr Edmund Kwong-ho LEUNG

Dr Man-chiu LO

Professor Felice Lieh-MAK

Professor Dhirendra K. SRIVASTAVA

Mr Benny Y.T. TAI

Mr Vincent Kam-chuen TSE

Mr Chi-tin WAN

Mr Siu-kai WAN

Professor Gui-guo WANG

Dr Chung-kwong WONG

Professor John WONG

Professor C.Y. YEUNG

Mr Patrick Se-kit YUEN

* In alphabetical order

Annex 14 Visits to the Office of The Ombudsman

Date	Visitors*
7 July 2004	Delegates from Changchun, organised by The Hong Kong Polytechnic University
27 July 2004	Zhao Zhen Xi, Vice Director, Supervision Department of Sichuan
27 August 2004	Mainland officials of Training Scheme in Common Law, organised by the Department of Justice
16 September 2004	Senior professional officers from Shanghai Municipal People's Government, organised by the Civil Service Bureau
17 September 2004	Judge Anand Satyanand, Ombudsman, New Zealand
2 November 2004	Delegates from Shanxi University, Inner Mongolia University and Xinjiang University, organised by The Legal Education Trust Fund
25 November 2004	Delegates from the Legal Clinic of the Sun Yat-sen University in Guangzhou and Guangzhou University Law School, organised by Asian Legal Resource Centre
26 November 2004	Delegates from the Personnel Department of Chongqing City, organised by Xinhua International Cultural Exchange Company Limited
30 November 2004	Postgraduate students from the School of Professional and Continuing Education of the University of Hong Kong
14 December 2004	Mr WANG Zhenchuan, Deputy Prosecutor-General, Supreme People's Procuratorate, organised by the Independent Commission Against Corruption

* Excluding group visits from local schools and social service agencies

Annex 15 Conferences and Duty Visits

Date	Participants	Conferences/Duty Visits
26 - 29 April 2004	Ms Alice Tai The Ombudsman Mr Tommy Wong Chief Investigation Officer Ms Kathleen Chan Senior External Relations Officer	8th Asian Ombudsman Association Conference in Seoul, South Korea
4 - 6 September 2004	Ms Alice Tai The Ombudsman Mr Tommy Wong Chief Investigation Officer	Board of Directors' Meeting of International Ombudsman Institute ("IOI") in Quebec, Canada
7 - 10 September 2004	Ms Alice Tai The Ombudsman Mr Tony Ma Assistant Ombudsman Mr Tommy Wong Chief Investigation Officer	8th Conference of IOI in Quebec, Canada
8 - 11 February 2005	Ms Alice Tai The Ombudsman	22nd Australasian and Pacific Ombudsman Conference in Wellington, New Zealand
7 - 9 March 2005	Ms Alice Tai The Ombudsman	Extraordinary Board of Directors' Meeting of IOI in Mexico City, Mexico
10 - 12 March 2005	Ms Alice Tai The Ombudsman	Mexico's National Commission for Human Rights Conference in Compeche, Mexico

Table 1 Caseload

	Reporting year#				
	2000/01	2001/02 (10 1/2 months)	2002/03	2003/04	2004/05
(A) Enquiries received	**11,821**	**12,900**	**14,298**	**12,552**	**11,742**
(B) Complaints received	**3,709**	**3,736**	**4,382**	**4,661**	**4,654**
(C) Complaints brought forward	**581**	**814**	**760**	**772**	**1,088**
(D) Complaints for processing = (B) + (C)	**4,290**	**4,550**	**5,142**	**5,433**	**5,742**
(E) Complaints concluded	**3,476**	**3,790**	**4,370**	**4,345**	**5,023**
By preliminary inquiries	**1,064**	**1,567**	**2,172**	**1,834**	**1,873**
– By referral to complainee departments/ organisations for replies (INCH)	364	353	176	203	209
– By rendering assistance/clarification (RAC)	700	1,214	1,996	1,631	1,664
By full investigation	**161**	**331**	**124**	**284**	**125**
– Withdrawn/Discontinued	-	6	2	6	0
– Substantiated	28	18	15	14	31
– Partially substantiated	41	263	39	24	46
– Unsubstantiated	80	42	68	236	45
– Incapable of determination	12	2	0	1	0
– Substantiated other than alleged	-	-	-	3	3
By mediation	**29**	**19**	**6**	**7**	**6**
Complaints screened out	**1,859**	**1,563**	**1,729**	**1,892**	**1,948**
– Restrictions on investigation	795	685	971	1,259	1,132
– Outside jurisdiction	1,064	878	758	633	816
Complaints withdrawn/discontinued	**363**	**310**	**339**	**328**	**1,071**
(F) Percentage of complaints concluded = (E) ÷ (D)	**81%**	**83%**	**85%**	**80%**	**88%**
(G) Total cases carried forward = (D) - (E)	**814**	**760**	**772**	**1,088**	**719**
(H) Number of direct investigations completed	**5**	**4**	**6**	**5**	**5**
(I) Direct investigation assessment reports produced	**9**	**0**	**1**	**5**	**6**

Period of Reporting Years
2000/01: 16.5.00 - 15.5.01 2001/02: 16.5.01 - 31.3.02 2002/03: 1.4.02 - 31.3.03
2003/04: 1.4.03 - 31.3.04 2004/05: 1.4.04 - 31.3.05

From 2001/02, the reporting year ends on 31 March to coincide with the end of financial year.

Table 2 Enquiries/Complaints Received

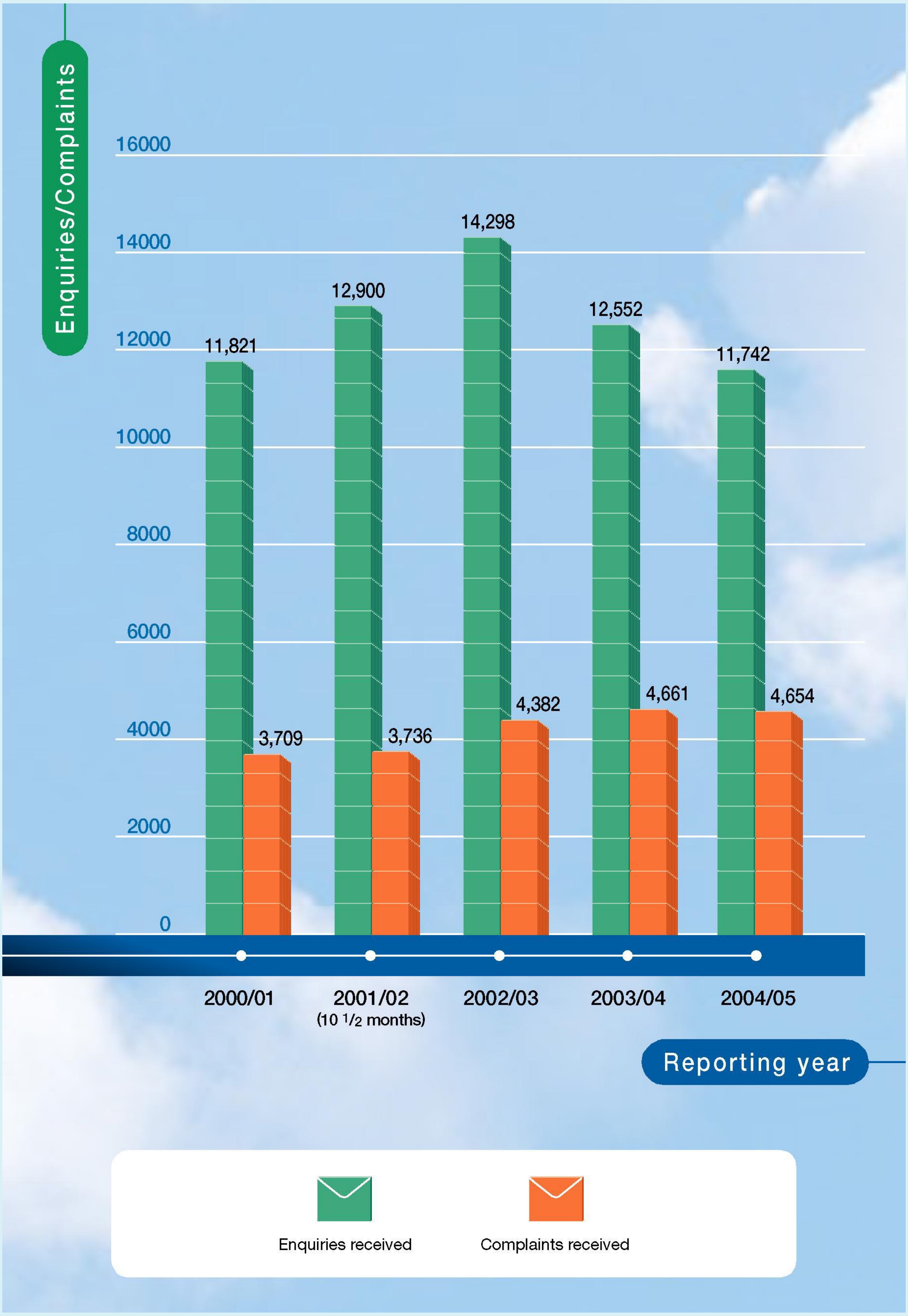


Table 3 Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	63	37
Airport Authority	(AA)	10	7
Architectural Services Department	(Arch SD)	16	13
Audit Commission	(Aud)	3	1
Auxiliary Medical Service	(AMS)	0	1
Buildings Department	(BD)	253	164
Census and Statistics Department	(C & SD)	7	4
Civil Aid Service	(CAS)	2	1
Civil Aviation Department	(CAD)	5	1
Civil Engineering and Development Department	(CEDD)	7	18
Civil Engineering Department	(CED)	1	1
Companies Registry	(CR)	14	11
Correctional Services Department	(CSD)	45	234
Customs and Excise Department	(C & ED)	62	24
Department of Health	(DH)	66	41
Department of Justice	(D of J)	20	15
Drainage Services Department	(DSD)	27	22
Electrical and Mechanical Services Department	(E & MSD)	10	6
Employees Retraining Board	(ERB)	20	6
Environmental Protection Department	(EPD)	70	104
Equal Opportunities Commission	(EOC)	28	17
Fire Services Department	(FSD)	37	27
Food and Environmental Hygiene Department	(FEHD)	493	373
General Office of the Chief Executive's Office	(GOCEO)	2	9
Government Flying Service	(GFS)	1	0
Government Laboratory	(Govt Lab)	1	0
Government Logistics Department	(GLD)	3	2
Government Property Agency	(GPA)	6	15
GS - Chief Secretary for Administration's Office	(GS-CS)	12	12
GS - Civil Service Bureau	(GS-CSB)	10	26
GS - Commerce, Industry and Technology Bureau	(GS-CITB)	2	9
GS - Constitutional Affairs Bureau	(GS-CAB)	0	2
GS - Economic Development and Labour Bureau	(GS-EDLB)	3	7
GS - Education and Manpower Bureau	(GS-EMB)	104	62
GS - Environment, Transport and Works Bureau	(GS-ETWB)	7	166
GS - Financial Services and the Treasury Bureau	(GS-FSTB)	3	4
GS - Health, Welfare and Food Bureau	(GS-HWFB)	5	18
GS - Home Affairs Bureau	(GS-HAB)	2	13
GS - Housing, Planning and Lands Bureau	(GS-HPLB)	2	15
GS - Security Bureau	(GS-SB)	3	24
GS - Financial Secretary's Private Office	(GS-FSPO)	0	1
GS - Unclassified		3	0
Highways Department	(Hy D)	33	97
Hongkong Post	(HK Post)	108	55
Home Affairs Department	(HAD)	123	176
Hong Kong Arts Development Council	(HKADC)	2	2
Hong Kong Examinations and Assessment Authority	(HKEAA)	35	14
Hong Kong Housing Authority	(HKHA)	38	37

Table 3 Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Hong Kong Housing Society	(HKHS)	42	26
Hong Kong Monetary Authority	(HKMA)	22	10
Hong Kong Observatory	(HKO)	10	5
Hong Kong Sports Development Board	(HKSDB)	8	3
Hospital Authority	(HA)	340	160
Housing Department	(HD)	720	496
Immigration Department	(Imm D)	263	109
Information Services Department	(ISD)	1	0
Information Technology Services Department	(ITSD)	1	1
Inland Revenue Department	(IRD)	117	64
Intellectual Property Department	(IPD)	4	1
Judiciary Administrator	(JA)	157	51
Kowloon-Canton Railway Corporation	(KCRC)	20	19
Labour Department	(LD)	138	57
Land Registry	(LR)	9	7
Lands Department	(Lands D)	227	238
Legal Aid Department	(LAD)	174	69
Legislative Council Secretariat	(LCS)	2	3
Leisure and Cultural Services Department	(LCSD)	139	91
Mandatory Provident Fund Schemes Authority	(MPFA)	58	15
Marine Department	(MD)	15	14
Office of the Telecommunications Authority	(OFTA)	33	27
Official Receiver's Office	(ORO)	61	27
Planning Department	(Plan D)	11	88
Privacy Commissioner for Personal Data	(PCO)	20	16
Radio Television Hong Kong	(RTHK)	13	8
Rating and Valuation Department	(RVD)	25	27
Registration and Electoral Office	(REO)	25	26
Securities and Futures Commission	(SFC)	21	6
Social Welfare Department	(SWD)	360	140
Student Financial Assistance Agency	(SFAA)	60	20
Television and Entertainment Licensing Authority	(TELA)	11	7
Territory Development Department	(TDD)	5	1
Trade and Industry Department	(TID)	21	7
Transport Department	(TD)	151	192
Treasury	(Try)	11	9
Urban Renewal Authority	(URA)	13	20
Vocational Training Council	(VTC)	23	9
Water Supplies Department	(WSD)	242	126
Total		**5,340**	**4,089**

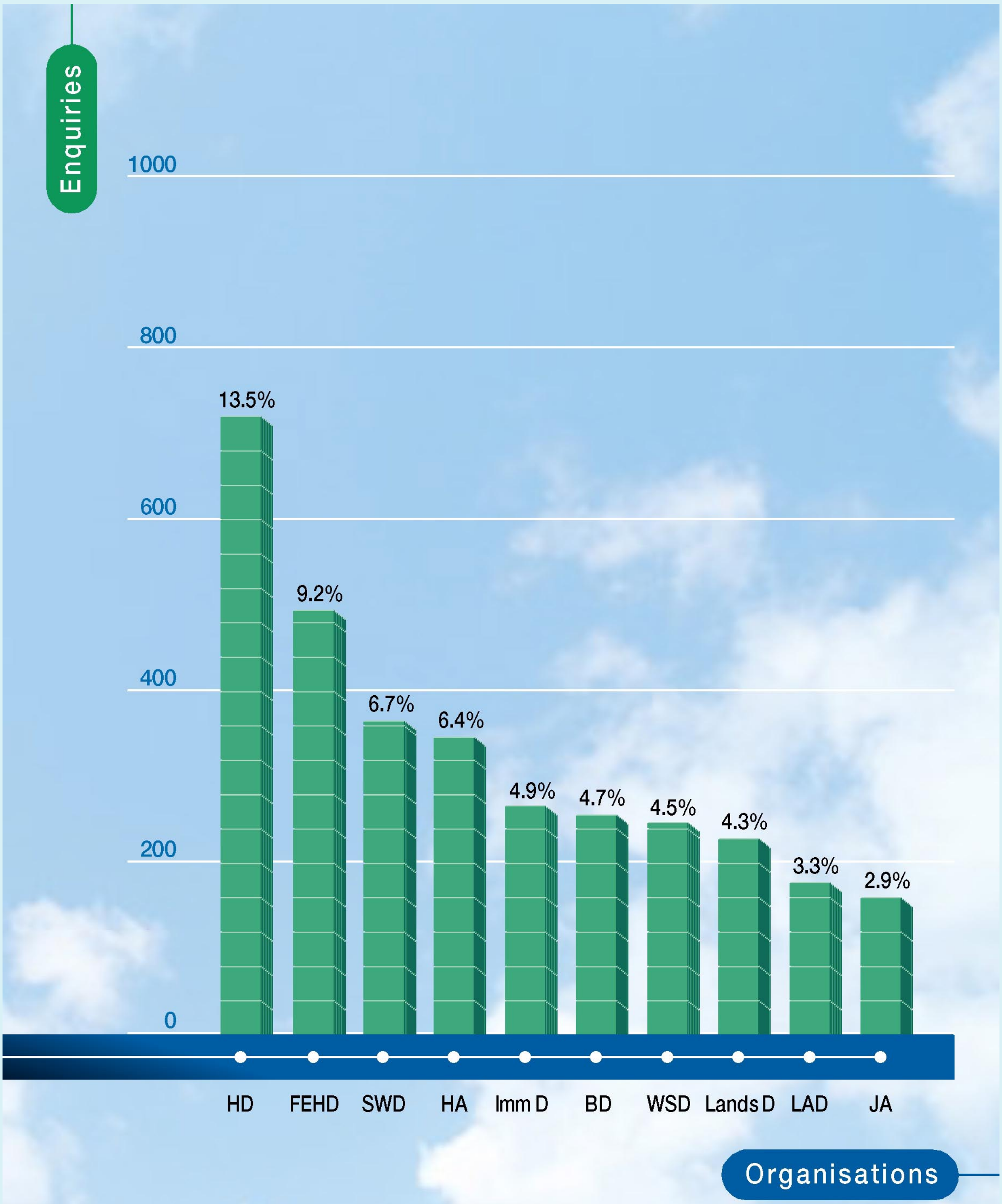
Note 1: The total number of enquiries and complaints received in Table 1 are 11,742 and 4,654 respectively. They are different from the figures shown in Table 3 for the following reasons:
- An enquiry/complaint involving more than one organisation is shown against each of the organisation.
- Enquiries/complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

Note 2: Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Note 3: The Hong Kong Sports Development Board was dissolved on 1 October 2004.

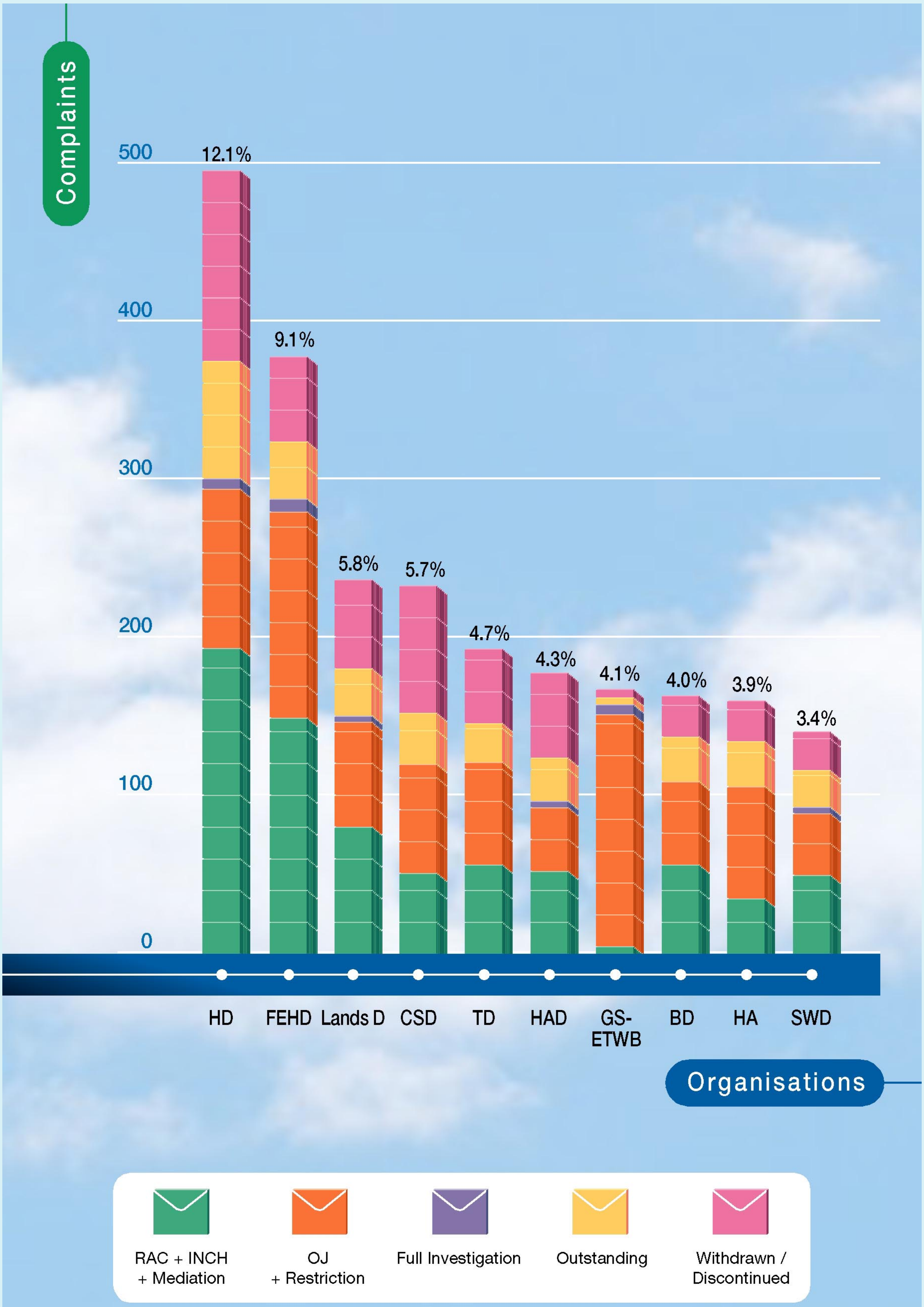
Note 4: Civil Engineering Department and Territory Development Department were incorporated to become Civil Engineering and Development Department on 1 July 2004.

Table 4 Enquiries : Top Ten Organisations



* See also Note 1 in Table 3

Table 5 Complaints : Top Ten Organisations



* See Note 1 in Table 3

Table 6

Nature of Complaints Concluded : 5,023 Cases

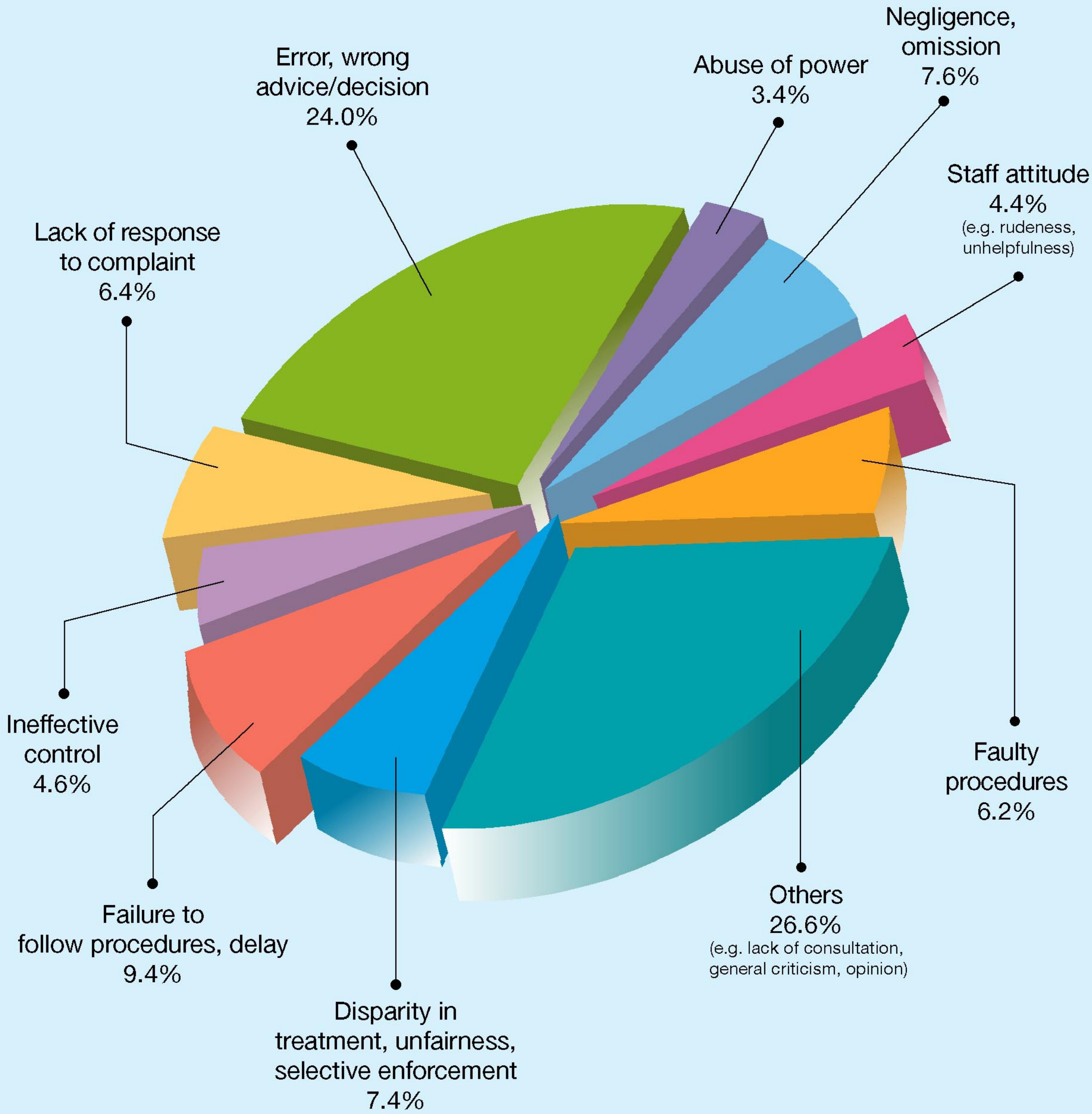


Table 7 Classification of Complaints Concluded : 5,023 Cases

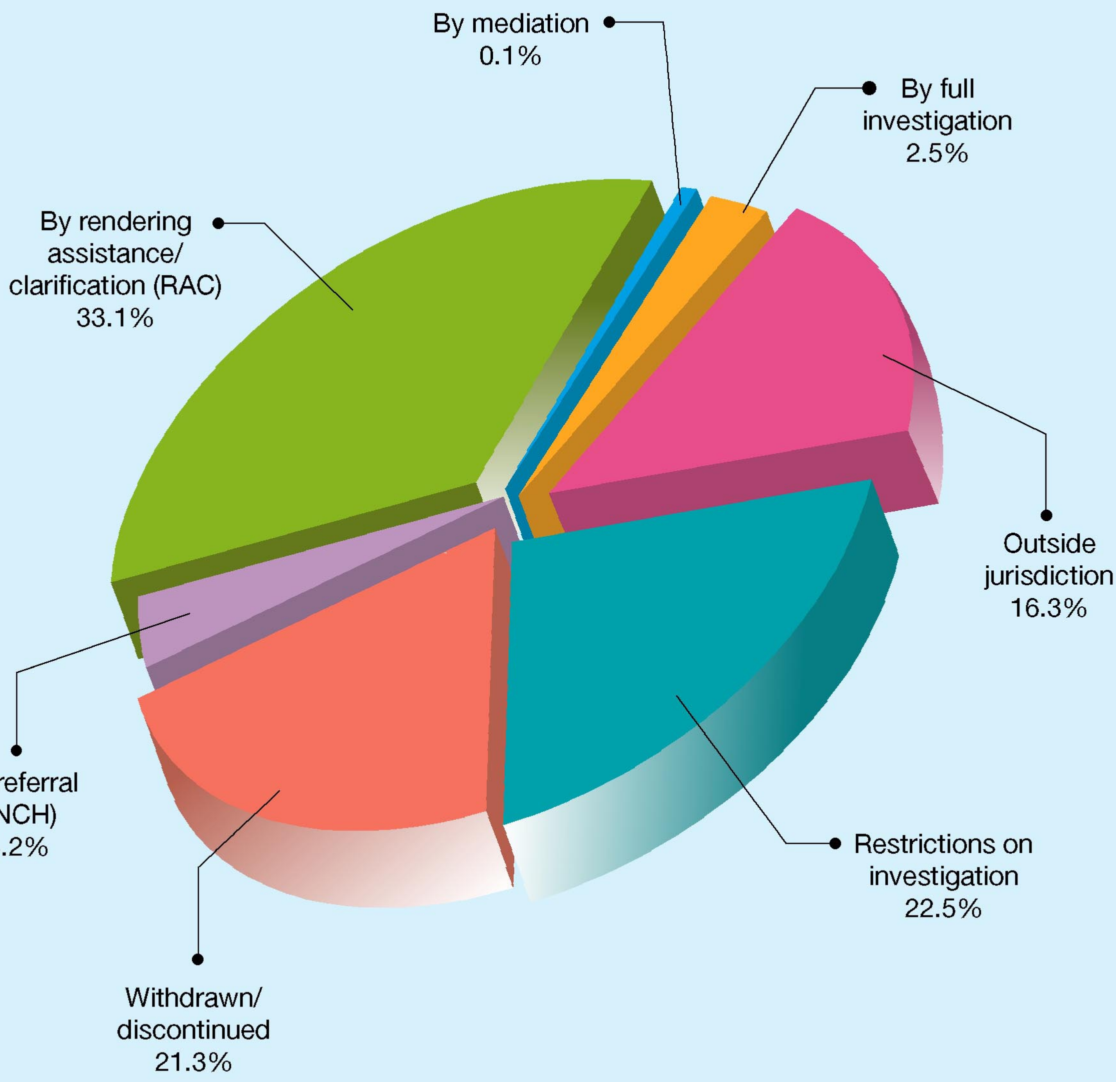


Table 8 Results of Complaints Concluded by Full Investigation : 125 Cases

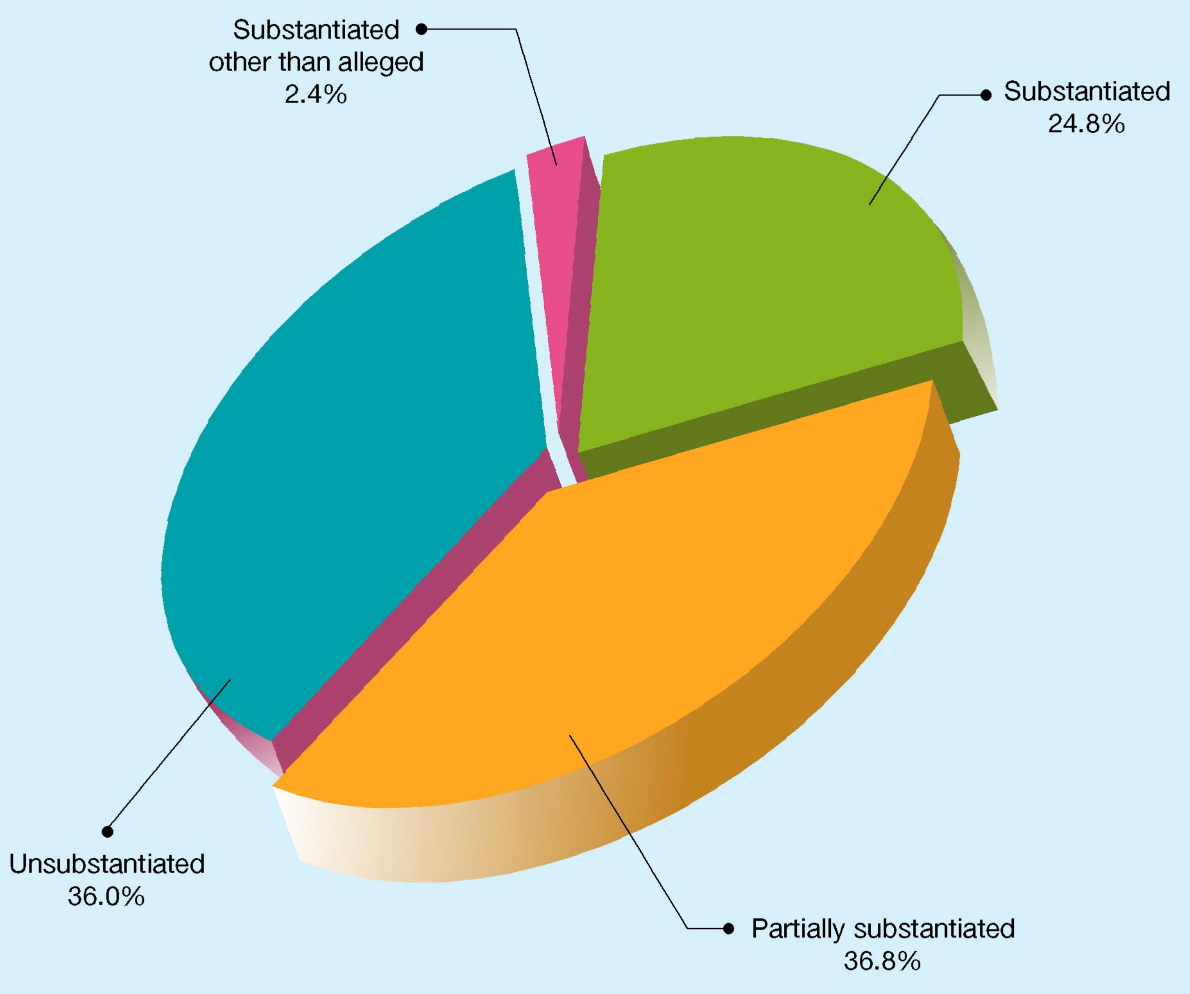


Table 9 Results of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken /suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	15	4 (27%)	11 (73%)		6
Architectural Services Department	6	1 (17%)	5 (83%)		2
Buildings Department	79	9 (11%)	70 (89%)		6
Census and Statistics Department	1		1 (100%)		
Civil Engineering and Development Department	9	2 (22%)	7 (78%)		
Civil Engineering Department	1	1 (100%)			
Companies Registry	3		3 (100%)		
Correctional Services Department	89		72 (81%)	17 (19%)	2
Customs and Excise Department	8	1 (12.5%)	6 (75%)	1(12.5%)	
Department of Health	107	4 (4%)	101 (94%)	2 (2%)	4
Department of Justice	3	2 (67%)	1 (33%)		1
Drainage Services Department	8	1 (12.5%)	7 (87.5%)		
Electrical and Mechanical Services Department	2		2 (100%)		
Employees Retraining Board	2		2 (100%)		
Environmental Protection Department	27		27 (100%)		3
Equal Opportunities Commission	7		7 (100%)		
Fire Services Department	12	3 (25%)	8 (67%)	1 (8%)	1
Food and Environmental Hygiene Department	178	26 (14.6%)	151 (84.8%)	1 (0.6%)	29
General Office of the Chief Executive's Office	3		3 (100%)		
Government Logistics Department	1		1 (100%)		
Government Property Agency	4		4 (100%)		
Government Secretariat					
– Chief Secretary for Administration's Office	6	2 (33%)	4 (67%)		1
– Civil Service Bureau	2		2 (100%)		
– Commerce, Industry and Technology Bureau	5	1 (20%)	4 (80%)		
– Economic Development and Labour Bureau	2		2 (100%)		
– Education and Manpower Bureau	20	5 (25%)	15 (75%)		5
– Environment, Transport and Works Bureau	6		5 (83%)	1 (17%)	
– Financial Secretary's Private Office	1		1 (100%)		
– Financial Services and the Treasury Bureau	1		1 (100%)		
– Health, Welfare and Food Bureau	3		3 (100%)		
– Home Affairs Bureau	3	1 (33%)	2 (67%)		
– Housing, Planning and Lands Bureau	4	1 (25%)	2 (50%)	1 (25%)	
– Security Bureau	1		1 (100%)		
Highways Department	25	3 (12%)	22 (88%)		
Hongkong Post	22	5 (23%)	17 (77%)		8
Home Affairs Department	167	8 (4.8%)	158 (94.6%)	1 (0.6%)	5
Hong Kong Examinations and Assessment Authority	6	1 (17%)	5 (83%)		3
Hong Kong Housing Authority	15	1 (7%)	14 (93%)		1

Table 9 Results of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken /suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Hong Kong Housing Society	13	2 (15%)	10 (77%)	1 (8%)	1
Hong Kong Monetary Authority	4		4 (100%)		
Hong Kong Observatory	2		2 (100%)		
Hong Kong Sports Development Board	2		2 (100%)		
Hospital Authority	53	12 (22.6%)	38 (71.7%)	3 (5.7%)	3
Housing Department	184	27 (15%)	153 (83%)	4 (2%)	28
Immigration Department	39	3 (7.7%)	33 (84.6%)	3 (7.7%)	9
Inland Revenue Department	17	9 (53%)	8 (47%)		
Intellectual Property Department	1		1 (100%)		
Judiciary Administrator	14	4 (29%)	9 (64%)	1 (7%)	5
Kowloon-Canton Railway Corporation	4	1 (25%)	3 (75%)		
Labour Department	28	3 (11%)	23 (82%)	2 (7%)	
Land Registry	4	2 (50%)	2 (50%)		1
Lands Department	128	24 (19%)	104 (81%)		21
Legal Aid Department	16	1 (6%)	15 (94%)		1
Leisure and Cultural Services Department	31	9 (29%)	22 (71%)		12
Mandatory Provident Fund Schemes Authority	6		6 (100%)		
Marine Department	5		5 (100%)		1
Not Specified	2		2 (100%)		
Office of the Telecommunications Authority	13	1 (8%)	12 (92%)		1
Official Receiver's Office	9	1 (11%)	8 (89%)		
Other Permanent Non-statutory Bodies	1		1 (100%)		
Planning Department	22		22 (100%)		
Privacy Commissioner for Personal Data	3	2 (67%)	1 (33%)		
Radio Television Hong Kong	2	1 (50%)	1 (50%)		4
Rating and Valuation Department	7	2 (29%)	5 (71%)		1
Registration and Electoral Office	5	1 (20%)	4 (80%)		1
Securities and Futures Commission	3		2 (67%)	1 (33%)	
Social Welfare Department	55	6 (11%)	49 (89%)		6
Student Financial Assistance Agency	4	1 (25%)	3 (75%)		
Television and Entertainment Licensing Authority	2		2 (100%)		
Territory Development Department	3		3 (100%)		
Trade and Industry Department	1		1 (100%)		
Transport Department	64	5 (8%)	59 (92%)		4
Treasury	1	1 (100%)			
Urban Renewal Authority	8		8 (100%)		
Vocational Training Council	4	2 (50%)	2 (50%)		3
Water Supplies Department	50	7 (14%)	42 (84%)	1 (2%)	2
Total	**1,664**	**209**	**1,414**	**41**	**181**

Note 1: Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance/ Clarification are not shown.

Note 2: The Hong Kong Sports Development Board was dissolved on 1 October 2004.

Note 3: Civil Engineering Department and Territory Development Department were incorporated to become Civil Engineering and Development Department on 1 July 2004.

Table 10 Processing Time for Complaints Concluded

(A) Processing Time for Complaints Concluded

TIME \ YEAR	2000/01	2001/02 (10 1/2 months)	2002/03	2003/04	2004/05
Less than 1 month	56.5%	53.7%	59.2%	56.4%	**52.8%**
1 – 3 months	20.5%	18.3%	15.1%	14.8%	**12.5%**
3 – 6 months	20.5%	22.6%	24.0%	27.0%	**32.9%**
6 – 9 months	1.7%	2.1%	0.9%	1.0%	**1.0%**
9 – 12 months	0.6%	0.9%	0.3%	0.4%	**0.6%**
More than 12 months	0.2%	2.4%	0.5%	0.4%	**0.2%**
Total	**3,476**	**3,790**	**4,370**	**4,345**	**5,023**

(B) Processing Time for Complaints Concluded by Full Investigation and Other Modes

TIME \ YEAR	2000/01	2001/02 (10 1/2 months)	2002/03	2003/04	2004/05
Concluded by full investigation					
Less than 3 months	6.8%	0.3%	0.8%	37.7%	**0.8%**
3 – 6 months	49.7%	50.8%	56.5%	45.4%	**36.8%**
6 – 9 months	26.1%	13.6%	14.5%	8.4%	**28.8%**
9 – 12 months	13.7%	8.4%	9.7%	3.9%	**24.8%**
More than 12 months	3.7%	26.9%	18.5%	4.6%	**8.8%**
Number of complaints	**161**	**331**	**124**	**284**	**125**
Concluded by other modes (i.e. Item E in Table 1 excludes complaints concluded by full investigation)					
Less than 1 month	59.3%	58.8%	60.9%	60.3%	**54.1%**
1 – 3 months	21.2%	20.0%	15.5%	13.2%	**12.8%**
3 – 6 months	19.0%	19.9%	23.1%	25.7%	**32.8%**
6 – 9 months	0.5%	1.0%	0.4%	0.5%	**0.3%**
9 – 12 months	0.0%	0.2%	0.1%	0.2%	**0.0%**
More than 12 months	0.0%	0.1%	0.0%	0.1%	**0.0%**
Number of complaints	**3,315**	**3,459**	**4,246**	**4,061**	**4,898**